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MOHUN ON WAREHOUSEMEN

A COMPILATION OF

WAREHOUSE LAWS

AND DECISIONS

CONTAINING AN ANNOTATED COPY OF THE UNIFORM WAREHOUSE RECEIPTS ACT, THE STATUTES OF EACH OF THE STATES AND TERRITORIAL POSSESSIONS PERTAINING TO WAREHOUSEMEN, TOGETHER WITH A DIGEST OF THE DECISIONS OF THE STATE, FEDERAL, AND TERRITORIAL COURTS, IN ALL CASES AFFECTING WAREHOUSEMEN, WITH AN ANALYTICAL INDEX.

BY

BARRY MOHUN

OF THE BAR OF THE DISTRICT OF COLUMBIA.

SECOND EDITION

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PREFACE TO SECOND EDITION.

The plan adopted for the first edition of this work of alloting a chapter to each state, of giving in each first the laws pertaining to warehousemen followed by the decisions arranged in a series of groups each represented by a letter of the alphabet, has been adhered to in this edition. Since the appearance of the first edition the Uniform Warehouse Receipts Act has been drawn and enacted in twenty-eight states, the District of Columbia, the Philippine Islands, and Alaska. It is hardly necessary to add that the passage of the Act by the legislatures of this number of states and territories has been extremely gratifying to all those interested in warehouse jurisprudence and in the codification of commercial law.

The American Warehousemen's Association, under whose auspices the first edition of this work was issued, has in order that the publication should be continued, generously assigned to the publishers the copyright of the work.

It is the earnest hope of the author that this work may be of real service to the profession and the warehousemen of our country.

BARRY MOHUN.

Washington, D. C., April 15th, 1914.

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PREFACE TO THE FIRST EDITION.

The arrangement of this volume being very simple, I feel that few, if any words of explanation are required.

It may, however, be well to outline the uniform system of classification of decisions followed in each of the chapters. Each state is allotted one chapter, the laws being given first, the decisions afterward; the latter are divided into a series of groups, each represented by a letter of the alphabet, and arranged in what I believe to be a logical sequence.

The subjects of the decisions found under each of the letters are as follows:

A.

Bailment; General principles; Kinds of; Difference between a bailment and a sale; Statute of limitations.

B.

Warehousemen, their duties, rights and liabilities in general; Public and private warehousemen; Ordinary care; When liability begins, when it terminates; Disputed ownership; Bailor's title; Conversion, what constitutes; Burden of proof; Liability of directors and stockholders; Partnership agreements, Acts of State Boards and Warehouse Commissions; Commissions; Procedure; Evidence; Pleading.

C.

Safe Deposit Boxes.

D.

Expressmen, transactions with warehousemen.

E.

Factors, transactions with warehousemen.

F.

Carriers, transactions with warehousemen and their liability as warehousemen.

G.

Government bonded warehouses.

H.

Storage charges; Lien; Sale; Contracts of storage construed.

I.

Segregation and commingling of stored property; Substitution of other property.

K.

Legal process against stored property.

L.

Replevin; Trover; Detinue.

M.

Property pledged with warehousemen.

N.

Loss or damage to stored property by fire, water, negligence, misdelivery, accident, theft, war, act of God; Procedure; Evidence; Pleading.

O.

Measure of damages for loss, or damage to goods.

P.

Insurance; Insurable interest; Warranty of "fire-proof," "frost-proof," etc.; Contracts to keep insured.

Q.

Warehouse receipts; Definition; Requisites; Interpretation; When title passes; Estoppel by; Receipts of private warehousemen; Exemptions in; Guaranty; Negotiability; What constitutes a bona fide holder; As collateral; Delivery of property without

surrender of receipt; Special and irregular receipts; Bogus and forged receipts; Procedure; Evidence; Pleading.

R.

Bills of lading; Definition; Liability upon; Exemptions in; Negotiability; As collateral; Bona fide holder; Bogus bills of lading; Procedure; Evidence; Pleading.

S.

Customs among warehousemen as affecting their rights and liabilities.

T.

Liability of warehousemen for injuries to employees; Doctrine of fellow servants; Fraud and crimes of warehousemen.

U.

Constitutionality of statutes pertaining to warehousemen; Statutes authorizing the taking of land, prescribing maximum rates for storage, etc.

If this volume assists in the dissemination of legal knowledge concerning the important subject of warehousemen, their rights and liabilities, I shall feel amply repaid.

My sincere thanks are due Mr. Albert M. Read, Vice President of the American Warehousemen's Association, and Chairman of its Committee on Laws and Legislation, for his untiring efforts which have made possible the publication of this volume.

BARRY MOHUN.

WASHINGTON, D. C.
September 12, 1903.

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CHAPTER I

UNIFORM WAREHOUSE RECEIPTS ACT

The Uniform Warehouse Receipts Act as finally adopted by the Commissioners on Uniform State Laws in 1906 is given below. The act has been passed by Congress to be in force in the District of Columbia and by the legislatures in the following states: California, Colorado, Connecticut, Illinois, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington and Wisconsin. The act is also in force in Alaska and in the Philippine Islands. In several of the above mentioned states certain changes have been made in the uniform act. Each of such changes is noted at the beginning of the chapter containing the laws of the states in which the changes occur.

UNIFORM WAREHOUSE RECEIPTS ACT—PART I.

THE ISSUE OF WAREHOUSE RECEIPTS

Section 1.—Persons Who May Issue Receipts: Warehouse receipts may be issued by any warehouseman.

Section 2.—Form of Receipts. Essential Terms: Warehouse receipts need not be in any particular form, but every such receipt must embody within its written or printed terms:

(a) The location of the warehouse where the goods are stored,

(b) The date of issue of the receipt,

(c) The consecutive number of the receipt,

(d) A statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order,

(e) The rate of storage charges,

(f) A description of the goods or of the packages containing them,

(g) The signature of the warehouseman, which may be made by his authorized agent,

(h) If the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership, and

(i) A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien. If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

A warehouseman shall be liable to any person injured thereby, for all damage caused by the omission from a negotiable receipt of any of the terms herein required.

A receipt or memorandum given by a warehouseman to his bailor, which shows that the property described therein was received from the bailor, by the warehouseman, for safe keeping, in the ordinary course of his business, is a sufficient warehouseman's receipt to entitle him, under this act, to require his bailor and an adverse claimant to interplead and settle their respective rights to the property, although the receipt may not embrace all of the terms set forth in section two of the act.—*N. J. Title Guarantee and Trust Co. v. Rector,* 76 N. J. E. 587.

Section 3.—Form of Receipts. What Terms May Be Inserted: A warehouseman may insert in a receipt, issued by him, any other terms and conditions, provided that such terms and conditions shall not—

(a) Be contrary to the provisions of this act.

(b) In any wise impair his obligation to exercise that degree of care in the safe-keeping of the goods entrusted to him which a reasonably careful man would exercise in regard to similar goods of his own.

A receipt given at the time of deposit of a hand bag at a parcel room contained a provision that the defendant bailee's liability was limited to $10.00. Held, this clause of the receipt impaired the bailee's obligation to exercise that degree of care in the safe keeping of the goods intrusted to it which a reasonably careful man would exercise in regard to similar goods of his own, and hence was a condition which the defendant had not, under this section, the legal right to insert in the receipt and it was therefore void. In the receipt the conditions above mentioned were in fine print and were not called to plaintiff's attention. It was further held, under the circumstances, the plaintiff was not chargeable with knowledge of such conditions.

Houghton, J., concurred in the opinion but took the view that the "Warehouse Law" was not applicable. *Healy* v. *N. Y. C. and H. R. R. Co.,* 138 N. Y. S. 287.

Section 4.—Definition of Non-Negotiable Receipt: A receipt in which it is stated that the goods received will be delivered to the depositor, or to any other specified person, is a non-negotiable receipt.

Section 5.—Definition of Negotiable Receipt: A receipt in which it is stated that the goods received will be delivered to the bearer, or to the order of any person named in such receipt is a negotiable receipt.

No provision shall be inserted in a negotiable receipt that it is non-negotiable. Such provision, if inserted, shall be void.

Section 6.—Duplicate Receipts Must Be So Marked: When more than one negotiable receipt is issued for the same goods, the word "duplicate" shall be plainly placed upon the face of every such receipt, except the one first issued. A warehouseman shall be liable for all damage caused by his failure so to do to any one who purchased the subsequent receipt for value supposing it to be an original, even though the purchase be after the delivery of the goods by the warehouseman to the holder of the original receipt.

Section 7.—Failure to Mark "Not Negotiable:" A non-negotiable receipt shall have plainly placed upon its face by the warehouseman issuing it "non-negotiable," or "not negotiable." In case of the warehouseman's failure so to do, a holder of the receipt who purchased it for value supposing it to be negotiable, may, at his option, treat such receipt as imposing upon the warehouseman the same liabilities he would have incurred had the receipt been negotiable.

This section shall not apply, however, to letters, memoranda, or written acknowledgments of an informal character.

PART II

OBLIGATIONS AND RIGHTS OF WAREHOUSEMEN UPON THEIR RECEIPTS

Section 8.—Obligation of Warehouseman to Deliver: A warehouseman, in the absence of some lawful excuse provided by this act, is bound to deliver the goods upon a demand made either by the holder of a receipt for the goods or by the depositor, if such demand is accompanied with—

(a) An offer to satisfy the warehouseman's lien,

(b) An offer to surrender the receipt if negotiable, with

such indorsements as would be necessary for the negotiation of the receipt, and

(c) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the warehouseman.

In case the warehouseman refuses or fails to deliver the goods in compliance with a demand by the holder or depositor so accompanied, the burden shall be upon the warehouseman to establish the existence of a lawful excuse for such refusal.

Where stored property has been destroyed a demand for its return is not necessary before bringing suit. *Buffalo Grain Co. v. Sowerby,* 195 N. Y. 355, 358.

Section 9.—Justification of Warehouseman in Delivering: A warehouseman is justified in delivering the goods, subject to the provisions of the three following sections, to one who is—

(a) The person lawfully entitled to the possession of the goods, or his agent,

(b) A person who is either himself entitled to delivery by the terms of a non-negotiable receipt issued for the goods, or who has written authority from the person so entitled either indorsed upon the receipt or written upon another paper, or

(c) A person in possession of a negotiable receipt by the terms of which the goods are deliverable to him or order or to bearer, or which has been endorsed to him or in blank by the person to whom delivery was promised by the terms of the receipt or by his mediate or immediate indorsee.

Section 10.—Warehouseman's Liability for Misdelivery: Where a warehouseman delivers the goods to one who is not in fact lawfully entitled to the possession of them, the warehouseman shall be liable as for conversion to all having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by subdivisions (b) and (c) of the preceding section and though he delivered the goods as authorized by said subdivisions he shall be so liable, if prior to such delivery he had either

(a) Been requested, by or on behalf of the person lawfully entitled to a right of property or possession in the goods, not to make such delivery, or

(b) Had information that the delivery about to be made was to one not lawfully entitled to the possession of the goods.

Section 11.—Negotiable Receipts Must Be Cancelled When

Goods Delivered: Except as provided in Section 36, where a warehouseman delivers goods for which he had issued a negotiable receipt, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the receipt, he shall be liable to any one who purchases for value in good faith such receipt, for failure to deliver the goods to him, whether such purchaser acquired title to the receipt before or after the delivery of the goods by the warehouseman.

Section 12.—Negotiable Receipts Must Be Cancelled or Marked When Part of Goods Delivered: Except as provided in Section 36, where a warehouseman delivers part of the goods for which he had issued a negotiable receipt and fails either to take up and cancel such receipt, or to place plainly upon it a statement of what goods or packages have been delivered he shall be liable, to any one who purchases for value in good faith such receipt, for failure to deliver all the goods specified in the receipt, whether such purchaser acquired title to the receipt before or after the delivery of any portion of the goods by the warehouseman.

Section 13.—Altered Receipts: The alteration of a receipt shall not excuse the warehouseman who issued it from any liability if such alteration was

(a) Immaterial,

(b) Authorized, or

(c) Made without fraudulent intent.

If the alteration was authorized, the warehouseman shall be liable according to the terms of the receipt as altered. If the alteration was unauthorized, but made without fraudulent intent, the warehouseman shall be liable according to the terms of the receipt, as they were before alteration.

Material and fraudulent alteration of a receipt shall not excuse the warehouseman who issued it from liability to deliver, according to the terms of the receipt as originally issued, the goods for which it was issued, but shall excuse him from any other liability to the person who made the alteration and to any person who took with notice of the alteration. Any purchaser of the receipt for value without notice of the alteration shall acquire the same rights against the warehouseman which such purchaser would have acquired if the receipt had not been altered at the time of the purchase.

Section 14.—Lost or Destroyed Receipts: Where a negotiable receipt has been lost or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient sureties to be approved by the court to protect the warehouseman from any liability or expense, which he or any person injured by such delivery may incur by reason of the original receipt remaining outstanding. The court may also in its discretion order the payment of the warehouseman's reasonable costs and counsel fees.

The delivery of the goods under an order of the court as provided in this section, shall not relieve the warehouseman from liability to a person to whom the negotiable receipt has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods.

Section 15.—Effect of Duplicate Receipts: A receipt upon the face of which the word "duplicate" is plainly placed is a representation and warranty by the warehouseman that such receipt is an accurate copy of an original receipt properly issued and uncancelled at the date of the issue of the duplicate, but shall impose upon him no other liability.

Section 16.— Warehouseman Can Not Set Up Title in Himself: No title or right to the possession of the goods, on the part of the warehouseman, unless such title or right is derived directly or indirectly from a transfer made by the depositor at the time of or subsequent to the deposit for storage, or from the warehouseman's lien, shall excuse the warehouseman from liability for refusing to deliver the goods according to the terms of the receipt.

Section 17.—Interpleader of Adverse Claimants: If more than one person claims the title or possession of the goods, the warehouseman may, either as a defense to an action brought against him for non-delivery of the goods, or as an original suit, whichever is appropriate, require all known claimants to interplead.

Where a complaint alleges in substance that plaintiff is a warehouseman and as such has on storage certain personal property which was deposited with it by two certain named persons; that a corporation claimed ownership of the property by virtue of an assignment from the depositors and demanded possession of the same from plaintiff and had threatened to hold plaintiff responsible if delivery were not made in accordance with its demand; that two persons other than the depositors claimed and demanded the property from plaintiff; that one of the named defendants was sheriff of the county and claimed to be entitled to the possession of

the property by virtue of a warrant of attachment issued in an action pending between two of the claimants; that there are pending several actions between claimants of the property; it was held the facts alleged brought the case within the above and the following section. *Manhattan Storage and Warehouse Co.* v. *Benguiat Art Museum et al.,* 139 N. Y. S. 1073.

A receipt or memorandum given by a warehouseman to his bailor, which shows that the property described therein was received from the bailor, by the warehouseman, for safe keeping, in the ordinary course of his business, is a sufficient warehouseman's receipt to entitle him, under this act, to require his bailor and an adverse claimant to interplead and settle their respective rights to the property, although the receipt may not embrace all of the terms set forth in section two of this act.—*N. J. Title Guarantee and Trust Co.* v. *Rector,* 76 N. J. E. 587.

Section 18.—Warehouseman has Reasonable Time to Determine Validity of Claims: If some one other than the depositor or person claiming under him has a claim to the title or possession of the goods, and the warehouseman has information of such claim, the warehouseman shall be excused from liability for refusing to deliver the goods, either to the depositor or person claiming under him or to the adverse claimant, until the warehouseman has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead.

Facts stated which were held not to have afforded the defendant warehouseman a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel claimants to interplead as provided in this section. *Zuber* v. *Mehrle,* 112 N. Y. S. 1093.

Section 19.—Adverse Title Is No Defense Except As Above Provided: Except as provided in the two preceding sections and in sections 9 and 36, no right or title of a third person shall be a defense to an action brought by the depositor or person claiming under him against the warehouseman for failure to deliver the goods according to the terms of the receipt.

Section 20.—Liability for Non-Existence or Misdiscription of Goods: A warehouseman shall be liable to the holder of a receipt for damages caused by the non-existence of the goods or by the failure of the goods to correspond with the description thereof in the receipt at the time of its issue. If, however, the goods are described in a receipt merely by a statement of marks or labels upon them, or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind, or that the packages containing the goods are said to contain goods of a certain kind, or by words of like purport, such statements, if true, shall not make liable the warehouseman issuing

the receipt, although the goods are not of the kind which the marks or labels upon them indicate, or of the kind they were said to be by the depositor.

Section 21.—Liability for Care of Goods: A warehouseman shall be liable for any loss or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful owner of similar goods would exercise, but he shall not be liable, in the absence of an agreement to the contrary, for any loss or injury to the goods which could not have been avoided by the exercise of such care.

This section makes no change in the common law doctrine concerning a warehouseman's liability, and is merely declaratory thereof. *Levine* v. *D. Wolff & Co.*, 78 N. J. L. 306. See also *Mortimer* v. *Otto*, 206 N. Y. 89, and *H. J. Keith Co.* v. *Booth Fisheries Co.*, 87 Atl. 715.

A warehouseman in the exercise of reasonable care, owes a duty to his patrons of making reasonable inspection from time to time to see that the building remains safe and in a proper condition. *Buffalo Grain Co.* v. *Sowerby*, 195 N. Y. 355, 358.

A receipt given at the time of deposit of a hand bag at a parcel room contained a provision that the defendant bailee's liability was limited to $10.00. Held, that this clause of the receipt impaired the bailee's obligation to exercise that degree of care in the safe keeping of the goods intrusted to it which a reasonably careful man would exercise in regard to similar goods of his own, and hence was a condition which the defendant had not, under this section, the legal right to insert in the receipt and it was therefore void. In the receipt the conditions above mentioned were in fine print and were not called to plaintiff's attention. It was further held, under the circumstances, the plaintiff was not chargeable with knowledge of such conditions.

Houghton, J., concurred in the opinion but took the view that the "Warehouse Law" was not applicable. *Healy* v. *N. Y. C. and H. R. R. Co.*, 138 N. Y. S. 287.

Section 22.—Goods Must Be Kept Separate: Except as provided in the following section, a warehouseman shall keep the goods so far separate from goods of other depositors, and from other goods of the same depositor for which a separate receipt has been issued, as to permit at all times the identification and redelivery of the goods deposited.

Section 23.—Fungible Goods May Be Commingled, If Warehouseman Authorized: If authorized by agreement or by custom, a warehouseman may mingle fungible goods with other goods of the same kind and grade. In such case the various depositors of the mingled goods shall own the entire mass in common and each depositor shall be entitled to such portion thereof as the amount deposited by him bears to the whole.

Section 24.—Liability of Warehouseman to Depositors of Commingled Goods: The warehouseman shall be severally lia-

ble to each depositor for the care and re-delivery of his share of such mass to the same extent and under the same circumstances as if the goods had been kept separate.

Section 25.—Attachment or Levy upon Goods for Which a Negotiable Receipt Has Been Issued: If goods are delivered to a warehouseman by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner, and a negotiable receipt is issued for them, they can not thereafter, while in the possession of the warehouseman, be attached by garnishment or otherwise, or be levied upon under an execution, unless the receipt be first surrendered to the warehouseman, or its negotiation enjoined. The warehouseman shall in no case be compelled to deliver up the actual possession of the goods until the receipt is surrendered to him or impounded by the court.

Section 26.—Creditors' Remedies to Reach Negotiable Receipts: A creditor whose debtor is the owner of a negotiable receipt shall be entitled to such aid from courts of appropriate jurisdiction, by injunction and otherwise, in attaching such receipt or in satisfying the claim by means thereof as is allowed at law or in equity, in regard to property which can not readily be attached or levied upon by ordinary legal process.

Section 27.—What Claims Are Included in the Warehouseman's Lien: Subject to the provisions of Section 30, a warehouseman shall have a lien on goods deposited or on the proceeds thereof in his hands, for all lawful charges for storage and preservation of the goods; also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing, coopering and other charges and expenses in relation to such goods; also for all reasonable charges and expenses for notice, and advertisements of sale, and for sale of the goods where default has been made in satisfying the warehouseman's lien.

The right to a lien given by this section is limited to a "warehouseman." Under its terms a casual bailee for hire is not entitled to a lien for storage charges. *Alton* v. *New York Taxicab Co.*, 121 N. Y. S. 271.

For history and rationale of this lien see *Trust* v. *Pirsson*, 1 Hilt 292, 297; *Rivara* v. *Ghio*, 3 E. D. Smith 264, 267; cited with approval in *Merritt* v. *Peirano*, 10 App. Div. 563, 565; *Lyungstrandh* v. *Haaker Co.*, 16 Misc. Rep. 387. See also *Robinson* v. *Kaplan*, 21 Misc. Rep. 686, 689.

Section 28.—Against What Property the Lien May Be Enforced: Subject to the provisions of Section 30 a warehouseman's lien may be enforced—

(a) Against all goods, whenever deposited, belonging to the person who is liable as debtor for the claims in regard to which the lien is asserted, and

(b) Against all goods belonging to others which have been deposited at any time by the person who is liable as debtor for the claims in regard to which the lien is asserted if such person had been so entrusted with the possession of the goods that a pledge of the same by him at the time of the deposit to one who took the goods in good faith for value would have been valid.

There is nothing in this section which is intended to give a warehouseman a lien upon goods belonging to another and stored by a stranger in fraud of the true owner's rights. *Farrell* v. *Harlem Terminal Storage Warehouse Co.*, 127 N. Y. S. 306.

Where there is a recorded chattel mortgage under which the mortgagee is entitled to possession of the goods upon default by mortgagor and the goods are stored by the mortgagor the warehouseman does not acquire a lien upon such goods for his charges. The possession of the goods by the mortgagor was not such that a pledge of them by him would have been valid, even if the pledgee took the goods in good faith for value. *Ludwig, Baumann & Co.* v. *Roth*, 123 N. Y. S. 191.

Section 29.—How the Lien May Be Lost: A warehouseman loses his lien upon goods—

(a) By surrendering possession thereof, or

(b) By refusing to deliver the goods when a demand is made with which he is bound to comply under the provisions of this act.

Section 30.—Negotiable Receipt Must State Charges for Which Lien is Claimed: If a negotiable receipt is issued for goods, the warehouseman shall have no lien thereon, except for charges for storage of those goods subsequent to the date of the receipt, unless the receipt expressly enumerates other charges for which a lien is claimed. In such cases there shall be a lien for the charges enumerated so far as they are within the terms of Section 27, although the amount of the charges so enumerated is not stated in the receipt.

Section 31.—Warehouseman Need Not Deliver Until Lien Is Satisfied: A warehouseman having a lien valid against the person demanding the goods may refuse to deliver the goods to him until the lien is satisfied.

Section 32.—Warehouseman's Lien Does Not Preclude Other Remedies: Whether a warehouseman has or has not a lien upon the goods, he is entitled to all remedies allowed by law to a creditor against his debtor, for the collection from the depositor

of all charges and advances which the depositor has expressly or impliedly contracted with the warehouseman to pay.

Section 33.—Satisfaction of Lien By Sale: A warehouseman's lien for a claim which has become due may be satisfied as follows:

The warehouseman shall give a written notice to the person on whose account the goods are held, and to any other person known by the warehouseman to claim an interest in the goods. Such notice shall be given by delivery in person or by registered letter addressed to the last known place of business or abode of the person to be notified. The notice shall contain—

(a) An itemized statement of the warehouseman's claim, showing the sum due at the time of the notice and the date or dates when it became due,

(b) A brief description of the goods against which the lien exists,

(c) A demand that the amount of the claim as stated in the notice, and of such further claim as shall accrue, shall be paid on or before a day mentioned, not less than ten days from the delivery of the notice if it is personally delivered, or from the time when the notice should reach its destination, according to the due course of post, if the notice is sent by mail, and

(d) A statement that unless the claim is paid within the time specified the goods will be advertised for sale and sold by auction at a specified time and place.

In accordance with the terms of a notice so given, a sale of the goods by auction may be had to satisfy any valid claim of the warehouseman for which he has a lien on the goods. The sale shall be had in the place where the lien was acquired, or, if such place is manifestly unsuitable for the purpose, at the nearest suitable place. After the time for the payment of the claim specified in the notice to the depositor has elapsed, an advertisement of the sale, describing the goods to be sold, and stating the name of the owner or person on whose account the goods are held, and the time and place of the sale, shall be published once a week for two consecutive weeks in a newspaper published in the place where such sale is to be held. The sale shall not be held less than fifteen days from the time of the first publication. If there is no newspaper published in such place, the advertise-

ment shall be posted at least ten days before such sale in not less than six conspicuous places therein.

From the proceeds of such sale the warehouseman shall satisfy his lien, including the reasonable charges of notice, advertisement, and sale. The balance, if any, of such proceeds shall be held by the warehouseman, and delivered on demand to the person to whom he would have been bound to deliver or justified in delivering the goods.

At any time before the goods are so sold any person claiming a right of property or possession therein may pay the warehouseman the amount necessary to satisfy his lien and to pay the reasonable expenses and liabilities incurred in serving notices and advertising and preparing for the sale up to the time of such payment. The warehouseman shall deliver the goods to the person making such payment if he is a person entitled, under the provisions of this act, to the possession of the goods on payment of charges thereon. Otherwise the warehouseman shall retain possession of the goods according to the terms of the original contract of deposit.

Section 34.—Perishable and Hazardous Goods: If goods are of a perishable nature, or by keeping will deteriorate greatly in value, or by their odor, leakage, inflammability, or explosive nature, will be liable to injure other property, the warehouseman may give such notice to the owner, or to the person in whose name the goods are stored, as is reasonable and possible under the circumstances, to satisfy the lien upon such goods, and to remove them from the warehouse, and in the event of the failure of such person to satisfy the lien and to remove the goods within the time so specified, the warehouseman may sell the goods at public or private sale without advertising. If the warehouseman after a reasonable effort is unable to sell such goods, he may dispose of them in any lawful manner, and shall incur no liability by reason thereof.

The proceeds of any sale made under the terms of this section shall be disposed of in the same way as the proceeds of sales made under the terms of the proceeding section.

Section 35.—Other Methods of Enforcing Liens: The remedy for enforcing a lien herein provided does not preclude any other remedies allowed by law for the enforcement of a lien against personal property nor bar the right to recover so much of the

warehouseman's claim as shall not be paid by the proceeds of the sale of the property.

Section 36.—Effect of Sale: After goods have been lawfully sold to satisfy a warehouseman's lien, or have been lawfully sold or disposed of because of their perishable or hazardous nature, the warehouseman shall not thereafter be liable for failure to deliver the goods to the depositor, or owner of the goods, or to a holder of the receipt given for the goods when they were deposited, even if such receipt be negotiable.

PART III

NEGOTIATION AND TRANSFER OF RECEIPTS

Section 37.—Negotiation of Negotiable Receipts by Delivery: A negotiable receipt may be negotiated by delivery—

(a) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the bearer, or

(b) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the receipt has indorsed it in blank or to bearer.

Where, by the terms of a negotiable receipt, the goods are deliverable to bearer or where a negotiable receipt has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any other specified person, and in such case the receipt shall thereafter be negotiated only by the indorsement of such indorsee.

Section 38.—Negotiation of Negotiable Receipts by Indorsement: A negotiable receipt may be negotiated by the indorsement of the person to whose order the goods are, by the terms of the receipt, deliverable. Such indorsement may be in blank, to bearer or to a specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in blank, to bearer or to another specified person. Subsequent negotiation may be made in like manner.

Section 39.—Transfer of Receipts: A receipt which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee.

A non-negotiable receipt cannot be negotiated, and the indorsement of such a receipt gives the transferee no additional right.

Section 40.—Who May Negotiate a Receipt: A negotiable receipt may be negotiated—

(a) By the owner thereof, or

(b) By any person to whom the possession or custody of the receipt has been entrusted by the owner, if, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of the person to whom the possession or custody of the receipt has been entrusted, or if at the time of such entrusting the receipt is in such form that it may be negotiated by delivery.

Bills of Lading were obtained from bank where they had been pledged to secure advances, by the giving of "trust receipts," by the pledgor. Such "trust receipts" *inter alia* provided that the pledgor obtained the bills of lading for the cotton mentioned, and if the cotton were sold he would hold the proceeds as trustee for the bank. The pledgor, having thus secured the bills of lading, stored the cotton and obtained negotiable warehouse receipts therefor which he pledged with another bank; which bank relied upon the above section to support its contention that the pledge to it was valid. The court held the pledge of the warehouse receipts void, that the pledgor had no authority under the "trust receipts" to store the cotton, obtain negotiable warehouse receipts therefor and pledge them for loans and that in order to pass title under this section and sections 41 and 47 of the Uniform Warehouse Receipts Act, even to one taking innocently, there must be in existence a valid warehouse receipt for goods stored by the true owner or by some one having the right and authority to store them for him. A receipt issued by a warehouseman without the authority, knowledge or consent of the owner of the goods can have no more effect than a forged bill or note. In re Dreuil & Co. (La.), 205 Fed. 568.

Section 41.—Rights of Person to Whom a Receipt Has Been Negotiated: A person to whom a negotiable receipt has been duly negotiated acquires thereby—

(a) Such title to the goods as the person negotiating the receipt to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the depositor or person to whose order the goods were to be delivered by the terms of the receipt had or had ability to convey to a purchaser in good faith for value, and

(b) The direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt as fully as if the warehouseman had contracted directly with him.

See note under section 40.

Section 42.—Rights of Person to Whom a Receipt Has Been Transferred: A person to whom a receipt has been transferred

but not negotiated, acquires thereby, as against the transferor, the title of the goods, subject to the terms of any agreement with the transferor.

If the receipt is non-negotiable such person also acquires the right to notify the warehouseman of the transfer to him of such receipt, and thereby to acquire the direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt.

Prior to the notification of the warehouseman by the transferor or transferee of a non-negotiable receipt, the title of the transferee to the goods and the right to acquire the obligation of the warehouseman may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferor, or by a notification to the warehouseman by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor.

Section 43.—Transfer of Negotiable Receipt Without Indorsement: Where a negotiable receipt is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the receipt, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made.

Section 44.—Warranties on Sale of Receipt: A person who for value negotiates or transfers a receipt by indorsement or delivery, including one who assigns for value a claim secured by a receipt, unless a contrary intention appears, warrants—

(a) That the receipt is genuine,

(b) That he has a legal right to negotiate or transfer it,

(c) That he has knowledge of no fact which would impair the validity or worth of the receipt, and

(d) That he has a right to transfer the title to the goods and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a receipt the goods represented thereby.

Section 45.—Indorser Not a Guarantor: The indorsement of a receipt shall not make the indorser liable for any failure on

the part of the warehouseman or previous indorsers of the receipt to fulfil their respective obligations.

Section 46.—No Warranty Implied from Accepting Payment of a Debt: A mortgagee, pledgee or holder for security of a receipt who in good faith demands or receives payment of the debt for which such receipt is security, whether from a party to a draft drawn for such debt or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such receipt or the quantity or quality of the goods therein described.

Section 47.—When Negotiation Not Impaired by Fraud, Mistake, or Duress: The validity of the negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the receipt was induced by fraud, mistake, or duress to entrust the possession or custody of the receipt to such person, if the person to whom the receipt was negotiated, or a person to whom the receipt was subsequently negotiated, paid value therefor, without notice of the breach of duty, or fraud, mistake or duress.

See note under section 40.

Section 48.—Subsequent Negotiation: Where a person having sold, mortgaged, or pledged goods which are in a warehouse and for which a negotiable receipt has been issued, or having sold, mortgaged, or pledged the negotiable receipt representing such goods, continues in possession of the negotiable receipt, the subsequent negotiation thereof by that person under any sale, or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, mortgage or pledge, shall have the same effect as if the first purchaser of the goods or receipt had expressly authorized the subsequent negotiation.

Section 49.—Negotiation Defeats Vendor's Lien: Where a negotiable receipt has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such receipt has been negotiated, whether such negotiation be prior or subsequent to the notification to the warehouseman who issued such receipt of the seller's claim to a lien or right of stoppage in transitu. Nor

shall the warehouseman be obliged to deliver or justified in delivering the goods to an unpaid seller unless the receipt is first surrendered for cancellation.

PART IV

CRIMINAL OFFENSES

Section 50.—Issue of Receipt for Goods Not Received: A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a receipt knowing that the goods for which such receipt is issued have not been actually received by such warehouseman, or are not under his actual control at the time of issuing such receipt, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

Section 51.—Issue of Receipt Containing False Statement: A warehouseman, or any officer, agent or servant of a warehouseman who fraudulently issues or aids in fraudulently issuing a receipt for goods knowing that it contains any false statement, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

Section 52.—Issue of Duplicate Receipts Not So Marked: A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a duplicate or additional negotiable receipt for goods knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncancelled, without plainly placing upon the face thereof the word "Duplicate," except in the case of a lost or destroyed receipt after proceedings as provided for in Section 14, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

Prior legislation providing a different penalty was repealed by the enactment of the above section. *State* v. *Gambrill,* 115 Md. 506.

Section 53.—Issue for Warehouseman's Goods of Receipts Which Do Not State That Fact: Where there are deposited with or held by a warehouseman goods of which he is owner, either solely or jointly or in common with others, such warehouseman, or any of his officers, agents, or servants who, knowing

this ownership, issues or aids in issuing a negotiable receipt for such goods which does not state such ownership, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

Section 54.—Delivery of Goods Without Obtaining Negotiable Receipt: A warehouseman, or any officer, agent, or servant of a warehouseman who delivers goods out of the possession of such warehouseman, knowing that a negotiable receipt the negotiation of which would transfer the right to the possession of such goods is outstanding and uncancelled, without obtaining the possession of such receipt at or before the time of such delivery, shall, except in the cases provided for in Sections 14 and 36, be found guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

Section 55.—Negotiation of Receipt for Mortgaged Goods: Any person who deposits goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

PART V

INTERPRETATION

Section 56.—When Rules of Common Law Still Applicable: In any case not provided for in this Act, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall govern.

Section 57.—Interpretation Shall Give Effect to Purpose of Uniformity: This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it.

Section 58.—Definitions: (1) In this Act, unless the context or subject matter otherwise requires—

"Action" includes counter claim, set-off, and suit in equity.

"Delivery" means voluntary transfer of possession from one person to another.

"Fungible goods" means goods of which any unit is, from its nature or by mercantile custom, treated as the equivalent of any other unit.

"Goods" means chattels or merchandise in storage, or which has been or is about to be stored.

"Holder" of a receipt means a person who has both actual possession of such receipt and a right of property therein.

"Order" means an order by indorsement on the receipt.

"Owner" does not include mortgagee or pledgee.

"Person" includes a corporation or partnership or two or more persons having a joint or common interest.

To "purchase" includes to take as mortgagee or as pledgee.

"Purchaser" includes mortgagee and pledgee.

"Receipt" means a warehouse receipt.

"Value" is any consideration sufficient to suport a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a receipt is taken either in satisfaction thereof or as security therefor.

"Warehouseman" means a person lawfully engaged in the business of storing goods for profit.

A casual bailee for hire is not a "warehouseman" within the meaning of this definition. *Alton* v. *New York Taxicab Co.*, 121 N. Y. S. 271.

One who is conducting the business of running safe deposit vaults, and warehousing valuable goods and chattels for hire is a "warehouseman" within the meaning of the above definition. *N. J. Title Guarantee and Trust Co.* v. *Rector*, 76 N. J. Eq. 587.

(2) A thing is done "in good faith" within the meaning of this Act, when it is in fact done honestly, whether it be done negligently or not.

Section 59.—Act Does Not Apply to Existing Receipts: The provisions of this Act do not apply to receipts made and delivered prior to the taking effect of this Act.

Section 60.—Inconsistent Legislation Repealed: All Acts or parts of Acts inconsistent with this act are hereby repealed.

Section 61.—Time When the Act Takes Effect: This Act shall take effect on the.....day of..... one thousand nine hundred and....

Section 62.—Name of Act: This Act may be cited as the Uniform Warehouse Receipts Act.

CHAPTER II

ALABAMA

LAWS PERTAINING TO WAREHOUSEMEN

Warehouses declared public:—Any person, firm or corporation may open a warehouse in incorporated towns and cities for the storage of cotton or other articles of value for compensation under the rules, restrictions, and regulations of this article; and all such warehouses in incorporated towns and cities are hereby declared to be public warehouses. Code Ala., 1907. Sec. 6123.

License required:—The proprietor, lessee, or manager of any such warehouse in any incorporated town or city shall be required, before transacting any business as such warehouseman, to procure from the judge of probate of the county in which such warehouse is opened, a license permitting such proprietor, lessee, or manager to transact business as a public warehouseman for the storage of cotton or other articles of value for compensation under the laws of this state. *Id.* Sec. 6124.

Application for license, contents of:—Such license shall be issued by said judge of probate upon written application, which shall set forth the location and name of such warehouse and the individual name of each person interested as owner or principal in the management of the same; or if it be managed or controlled by a corporation, the names of the president, secretary, and treasurer of such corporation shall be stated. *Id.* Sec. 6125.

License, effect of:—Such license shall give authority to carry on and conduct the business of a public warehouse in incorporated towns and cities for the storage of cotton or other articles of value for compensation in accordance with the laws of this state. *Id.* Sec. 6126.

Revocation of license:—Such license shall be revocable by the said judge of probate upon a regular proceeding before him for that purpose upon the complaint of any person in writing

setting forth the particular violation of law, and upon satisfactory proof to be taken in such manner as may be directed by the said judge. *Id.* Sec. 6127.

Bond of warehousemen, conditions and amount of:—The person, firm or corporation receiving a license under the provisions of this article shall file with the said judge of probate, issuing said license, a bond with two or more good and sufficient sureties, to be approved by said judge, or with some surety company that has complied with the laws of the State of Alabama, as surety, and payable to the State of Alabama in the sum of five thousand dollars, conditioned for the faithful performance of his, their, or its duties as a public warehouseman for the storage of cotton or other articles of value for compensation, and as indemnity and security to any and all persons storing cotton or other articles of value in said warehouse, in incorporated towns and cities, their executors, administrators, heirs, or assignees, for the payment of any and all damages he or they may sustain for the breach of any duty owed him or them by said warehouseman as such under the laws of this state. *Id.* Sec. 6128.

Filing and recording of bonds, fees for:—Such bond shall be filed and recorded by the probate judge of such county, in which the warehouse is opened, in his office in a suitable book to be kept for such purpose; and the probate judge shall receive for his services in recording said bond fifteen cents per hundred words and for issuing the license shall receive the sum of fifty cents, and for approving the bond shall receive the sum of one dollar, to be paid by the person applying for the license before the issuance of the same. *Id.* Sec. 6129.

Action on bond:—Any person aggrieved may sue on the said bond in his own name for the breach thereof until the penalty is exhausted. *Id.* Sec. 6130.

Warehouseman or common carrier to give receipt or bill of lading; contents:—A warehouseman or common carrier, receiving things or property of any kind for safe keeping, or for carriage, for hire or reward, must, on the delivery to him or it of such things or property, give the person from whom received a receipt or bill of lading, stating the order or condition in which such things or property may be, and if cotton in bales is received, stating expressly the condition of the bagging, ropes, or ties, and of the cotton, whether dry, damp, wet, or very wet; and

such warehouseman or common carrier is bound to deliver in like order and condition as when received; and if such receipt or bill of lading be not given, such things or property must be deemed and taken to have been in good order or condition at the time of delivery to such warehouseman or carrier, and he is bound to deliver in like good order and condition; and the warehouseman or carrier, neglecting or failing to give such receipt or bill of lading, is liable for all loss or damage the owner of such things or property may sustain in consequence of such neglect or failure; but nothing in this section contained must be construed as affecting the common law liability of a warehouseman or of a common carrier for an injury to or for the loss of such things or property. *Id.* Sec. 6131.

Receipt or bill of lading; when not to be given:—A warehouseman, common carrier, or a wharfinger, or other person engaged in the business of storage, carriage, or of keeping for shipment, or of forwarding things or property, must not give a receipt or bill of lading for the things or property for storage, for carriage, or for keeping for shipment, or for forwarding, unless such things or property have been actually delivered to him, or placed under his control; and a second receipt or bill of lading must not be issued or given, the original being outstanding, without writing across the face thereof the word "duplicate." *Id.* Sec. 6132.

Delivery to cotton compress:—A delivery of cotton at or to a compress for the purpose of being compressed, at the instance, or in the usual course of business of a warehouseman, common carrier, wharfinger, or other person engaged in the business of storage, or of carriage, or of keeping for shipment, or of forwarding, may be taken and deemed as an actual delivery to such warehouseman, carrier, wharfinger, or other person, and therefor a receipt or bill of lading may be issued or given. *Id.* Sec. 6133.

Sale, etc., by warehouseman, carrier, or wharfinger:—A warehouseman, common carrier, wharfinger, or other person engaged in the business of storage, carriage, or of keeping for shipment, or of forwarding things or property, must not, otherwise than is authorized by law, or by the contract of delivery to them, make sale of things or property intrusted to them; nor, without the assent in writing of the person to whom they may

have given a receipt or bill of lading, or of the legal holder of such receipt or bill of lading, encumber or transfer the same; nor must they, otherwise than as may be authorized by the contract of delivery to them, part with the control or possession of such things or property, without the assent in writing of the person to whom they may have given a receipt or bill of lading, or of the legal holder of such receipt or bill of lading. *Id.* Sec. 6134.

Warehouse receipt negotiable:—The receipt of a warehouseman, on which the words "not negotiable" are not plainly written or stamped, may be transferred by the indorsement thereof, and any person to whom the same is transferred must be deemed and taken to be the owner of the things or property therein specified, as far as to give validity to any pledge, lien, or transfer made or created by such person; but this section must not be so construed as to affect or impair the lien of a landlord on such things or property for rent or advances, or to affect or impair any lien thereon created by contract, of which notice is given by registration in the mode prescribed by law; and unless the words "not negotiable" be plainly written or stamped on the receipt, the warehouseman must not deliver the things or property therein specified except on the delivery and cancellation of the receipt; or in case of partial delivery, without an indorsement thereon of such partial delivery; in the event of the loss or destruction of such receipt, the warehouseman, not having notice of the transfer thereof by indorsement, may make delivery of the things or property to the rightful owner thereof; if the things or property, or any part thereof, be claimed or taken from the custody or possession of the warehouseman under legal process, the surrender thereof may be made without the delivery or cancellation of such receipt, or without indorsement thereon. *Id.* Sec. 6135.

False or second receipts, or delivery without cancellation, or indorsement of partial delivery:—If any common carrier, not having received things or property for carriage, shall give or issue a bill of lading, or receipt, as if such things or property had been received, or any warehouseman, or wharfinger, or person engaged in the business of storage, or keeping for shipment, or forwarding, shall issue a receipt for things or property, not having received them; or if any of such parties shall give or

issue a second bill of lading, or receipt, the original being outstanding, not expressing in such second bill of lading, or receipt, that it is a duplicate, or shall surrender such things or property without receiving and cancelling the bill of lading or receipt issued therefor, or make partial delivery, without indorsing such partial delivery on such bill of lading or receipt, except as provided in the preceding section, such carrier, warehouseman, wharfinger, or person is liable to any person injured thereby for all damages, immediate or consequential, therefrom resulting. *Id.* Sec. 6136.

How common carrier absolved from liability as insurer on arrival of freight:—A common carrier, if the place of destination of freight is a city or town having a daily mail, is not relieved from liability as a common carrier by reason of a deposit or storage of freight in a depot or warehouse, unless, within twenty-four hours after the arrival of such freight, notice thereof is given the consignee, personally or through the mail; and if notice is given through the mail, the postage must, by the consignee, be refunded to the carrier. *Id.* Sec. 6137.

Sale of perishable freight to pay charges:—When any fruit, vegetables, fresh meat, oysters, eggs, or fish, or other property of so perishable a nature as to be in danger of great depreciation, has been transported by a common carrier to the place of destination, and remains unclaimed for one day after its arrival, or if the consignee resides, or is present at the place of destination, for one day after personal notice in writing to him, or his agent, of the arrival of the freight, and the amount of charges due thereon, the same may be sold by the carrier or his agent at public outcry to the highest bidder for cash, at some public place at the point of destination, on one day's notice, indicating the nature of the package, the consignee and the time and place of sale, by publication in some newspaper published at the place of destination, or, if none is published thereat, then by posting the notice at the office or place of business of the carrier. *Id.* Sec. 6138.

Sale of other freight to pay charges:—When any other freight than that mentioned in the preceding section remains unclaimed for sixty days after its arrival at the place of destination, the same may be sold by the carrier or his agent at public outcry to the highest bidder for cash, at some public place within

the State of Alabama, after notice indicating the nature of the package, the consignee, and the time and place of sale, has been given for three weeks by publication once a week in some newspaper published at the place of sale, or if no such paper is there published, by posting the notice at three public places therein; but before any sale can be made under this section, the carrier must, before giving notice of the sale, demand payment of the charges due thereon from the owner or consignee, if either of them resides at the place of destination; but if neither of them resides at such place, failure to make such demand shall not prevent the sale; but notice of such sale shall be given the consignor, when known, by mail. *Id.* Sec. 6139.

Insurance; sale; proceeds:—The common carrier may insure the freight, at the expense of the owner, from the date of its arrival to the sale above authorized; and the proceeds of any sale made under the last two sections shall be applied to the payment of the freight, insurance, and all charges incident to storage and sale, and the residue, if any, shall be paid over to the owner or consignee. *Id.* Sec. 6140.

Three preceding sections applicable to warehousemen:—The provisions of the three preceding sections apply to warehousemen to whom freight is delivered by a common carrier. *Id.* Sec. 6141.

Concealing cotton or changing marks:—Any person who conceals cotton delivered to himself or another for sale or storage, or changes or mutilates the marks or brands thereof for the purpose of hindering the owner or person having a lien thereon from recovering it, and any warehouseman who permits such conduct, shall be liable to the owner or lienor for all damages, immediate or remote, by him sustained; and any warehouseman with whom such cotton has been stored, who has information which would lead to the discovery thereof, and refuses, on application, to impart the same to the owner or lienor, is liable to him for the value of the cotton. *Id.* Sec. 6142.

Issuing false receipts for merchandise, produce, or articles of value:—Any warehouseman, or agent or employe of any warehouseman, or any person engaged in the storage or safe keeping of goods, wares, merchandise, lime, or lumber, or cotton, grain, hay, or other produce, or any article of value, or any agent

or employe of such person, or any officer or agent of any corporation engaged in such business, who, with an intent to injure or defraud, issues any false receipt for any goods, wares, merchandise, lime, or lumber, cotton, grain, hay, or other produce, or any article of value, must, on conviction, be fined not more than two thousand dollars, and sentenced to hard labor for the county for not more than two years, one or both, at the discretion of the jury. *Id.* Sec. 7859.

Issuing false receipt or delivering goods without surrender of receipt:—Any warehouseman, wharfinger, agent of a vessel or railroad, or other person, who violates any of the provisions of sections 6132, 6134, 6135, 6136, of this Code, must, on conviction, be fined not more than one thousand dollars, or imprisoned in the penitentiary for not more than five years. *Id.* Sec. 7860.

Carrying on business of warehouseman without license, penalty:—Any person, firm, or corporation who shall transact the business of a warehouseman for the storage of cotton or other articles of value for compensation, without first securing a license and giving bond as required by this Code, or who shall continue to transact such business after such license has been revoked or such bond has become void or found insufficient to deliver property previously stored in said warehouse by the judge approving the same, shall be guilty of a misdemeanor, and, upon conviction, be fined a sum not less than one hundred nor over five hundred dollars for each and every day such business is carried on. *Id.* Sec. 7861.

DECISIONS AFFECTING WAREHOUSEMEN.

A.

Bailment and sale—What constitutes a sale—Delivery of warehouse receipts—Right to reject all inferior goods:—Where there was a delivery of the warehouse receipts for cotton, to the intending purchaser, and the price for the same paid to the vendor, out of such price there being deducted five dollars per bale on account of the reserved right of the purchaser to reweigh and inspect the cotton and to reject sand-packed or other of an inferior quality, it was held, that there was a sale of the cotton to the purchaser; that the title had vested in him subject to be

divested of so much of the cotton as was of inferior quality. *Allen, Bethune & Co.* v. *Maury & Co.*, 66 Ala. 10.

B.

"Public Warehouse" is "affected with a public interest"—Not a "Public Service Corporation":—While under the act of March 7, 1907 (Secs. 6123 et seq. Code 1907), warehouses are designated "public warehouses" and in view of other provisions of said act it may be correctly stated that the business of such warehouses is "affected with a public interest," nevertheless it cannot be held that a company so engaged is a "public service" corporation. A "public warehouse" under this act possesses no governmental powers, the act does not prescribe storage charges nor in any manner undertake to regulate the warehousing business which is a private business for private gain. *Gulf Compress Co.* v. *Harris, Cortner & Co.*, 48 So. 477.

Ordinary care:—Warehousemen are bailees for hire and it is their duty to bring, to the business in which they are employed, reasonable skill and diligence. They are answerable only for ordinary negligence. *Seals* v. *Edmonson*, 71 Ala. 509; *Hatchett* v. *Gibson*, 13 Ala. 587; *Ala. & Tenn. R. R. R. Co.* v. *Kidd*, 35 Ala. 209; *Kennedy Bros.* v. *Mobile & G. R. R. Co.*, 74 Ala. 430; *Moore* v. *The Mayor, etc.*, 1 Stern 284; *Mobile & G. R. R. Co.* v. *Prewitt*, 46 Ala. 63; *Jones* v. *Hatchett*, 14 Ala. 743; *Davis & Son* v. *Hurt*, 114 Ala. 146; *Hearn* v. *L. & N. R. Co.*, 60 So. 600.

Same—Want of ordinary care—Effect:—A want of ordinary care in one particular, on the part of a warehouseman, does not render him responsible for a loss occasioned by other causes not connected therewith. *Gibson* v. *Hatchett*, 24 Ala., 201.

Same—Care which warehouseman bestows upon his own property no criterion—Evidence:—The care which a warehouseman may bestow upon his own property, or the lack of such care, is a matter about which he must exercise his own discretion so long as he works no injury to others, or their property. The measure of his duty is to bestow reasonable skill and ordinary diligence in regard to the property intrusted to his custody—doing all that men of ordinary prudence would do under like circumstances, without regard to the care he may exert for himself. In an action against a warehouseman for the loss of cotton, it was shown that the cotton was destroyed on the night

of the twenty-fifth of December, that the warehouse was without a roof and that the authorities had refused to prohibit the explosion of firecrackers and like fireworks in the streets of the city. In this connection, evidence was offered to show that the defendant owned a large quantity of cotton stored in his warehouse and that on the twenty-fourth day of December he obtained additional insurance for three days only, it was held, that the rejection of the evidence in regard to this insurance on the defendant's own goods was proper. *Seals* v. *Edmonson,* 71 Ala. 509.

Same—Breach of contract by warehouseman—Change in liability:—Where a ginner received cotton and agreed to pick and bale it in preference to all other cotton, but fails to do so in that he gins other cotton, leaving part of plaintiff's cotton unginned, and the gin with plaintiff's cotton is destroyed by fire, the ginner is liable to the plaintiff for the loss. *Pattison* v. *Wallace,* 1 Stew. 48. Questioned in *Lehman, Durr & Co.* v. *Pritchett,* 84 Ala. 512.

Same—Authority of consignee or warehouseman to receive goods:—A consignee of goods shipped by steamboat is the agent of the owner to receive them at the port of delivery, and has authority to receive the goods at any particular point at that port; and where the bill of lading stipulates for a delivery "unto warehouse or to assigns" at a river landing in the interior, the warehouseman at that landing is the consignee. The consignee, who is, for most purposes, deemed the owner, may waive a full compliance with all the terms of the carrier's contract in reference to delivery. *Winston* v. *Cox B. & Co.,* 38 Ala. 268.

Delivery—Any member of a partnership entitled to goods stored in firm name:—Where property is stored by one member of a firm with a warehouseman, in the name of the firm, each partner may receipt for such property; a delivery to any one partner is a delivery to the firm. *Croswell* v. *Lehman, Durr & Co.,* 54 Ala. 363.

Same—Presumption from failure to deliver without explanation—Burden of proof:—If a warehouseman fails to deliver goods, intrusted to him, upon demand, and will not account for them or explain his refusal, it will be presumed that he has wrongfully converted, or wrongfully retains, the same. But

if he alleges their loss from a cause for which he would not be responsible, the burden is cast upon the plaintiff to prove that the loss was caused by the warehouseman's negligence. *Seals* v. *Edmonson*, 71 Ala. 509; *Mobile & G. R. R. Co.* v. *Prewitt*, 46 Ala. 63.

Same—What will not constitute element of damages in case of delay:—An action was brought against a warehouseman to recover damages owing to the failure of the warehouseman to deliver property on the day when ordered. It appeared that the delivery was delayed one day; the plaintiff claimed that as a result thereof he was entitled to the cost of the insurance for such day, and for the interest which he was obliged to pay on the money with which he was to pay for the goods. It was held, that there being no proof that the insurance expired on the day on which the goods were ordered from the warehouse, and that although it was a matter of common knowledge that cotton brokers borrowed money at very high rates of interest, nevertheless, such costs were not the necessary and natural result of the delay, and that, therefore, plaintiff could not recover for the same. *Swift & Co.* v. *Eastern Warehouse Co.*, 86 Ala. 294.

Bailee in general cannot dispute bailor's title—Notice of adverse claims—If he delivers to one purporting to be true owner he assumes burden of proving same:—In general, a bailee cannot deny the title of his bailor and it is his duty to return the property to his bailor upon demand. If through negligence or design he delivers the property to one not entitled to it, his action is a conversion thereof. But where he has notice that the property does not belong to his bailor, then a delivery to him would be a conversion. If the bailee, believing his bailor not to be the true owner, surrenders the property to one whom he believes to be such owner, he thereby assumes the burden of proving such ownership. *Powell* v. *Robinson & Ledyard*, 76 Ala. 423.

Same — Duty of bailee where adverse claims — Judgment against bailee conclusive as to title:—At common law a bailee cannot compel adverse claimants to interplead and he must defend himself as best he may. If the bailee be unwilling to take upon himself the *onus* of proving a superior title, he may await the bringing of an action by the adverse claimant. On such action being brought, he should give his bailor notice and require him to defend. A judgment against the bailee, whether the

bailor appears, or refuses to defend after notice, will be a sufficient defense in any subsequent action by the bailor. In such a case the rule that the bailee cannot dispute the title of his bailor does not apply. The judgment there would be conclusive of the superiority of the title of the adverse claimant. *Powell* v. *Robinson & Ledyard*, 76 Ala. 423; *Croswell* v. *Lehman, Durr & Co.*, 54 Ala. 363; *Calhoun* v. *Thompson*, 56 Ala. 166; *Thompson & Co.* v. *Union Warehouse Co.*, 110 Ala. 499.

Same—Warehouseman must deliver to bailor or his assignee—May be compelled to deliver to true owner:—It is a general rule that one who has received property from another as his bailee must restore, or account for the property, to him from whom he received it. But the bailee has no better title than the bailor, and consequently it follows that if a person entitled, as against the bailor, to the property, claims it, the bailee has no defense against him. A bailee, therefore, is protected where he has made a delivery to one authorized to receive the goods. *Croswell* v. *Lehman, Durr & Co.*, 54 Ala., 363.

Conversion—Delivery of mortgaged goods to holder of receipt—Recordation of mortgage constitutes notice:—The defendants, warehousemen, had stored certain grain in their warehouse and it appeared that at the time of receiving the grain it was mortgaged to the plaintiff, and that the mortgage thereof had been duly recorded, as required by the statutes of this state. Subsequently, the defendant delivered the grain to a third party who had become the holder of the warehouse receipt therefor. It was held, that the fact that the mortgage was recorded was constructive notice to the defendants of the interest of the plaintiff, and was as binding on them as actual notice would have been, and the delivery to the holder of the receipt was a conversion of the grain for which the defendant was liable. *Hudmun & Bros.* v. *Du Bose,* 85 Ala. 446; *Pippin* v. *Farmers Warehouse Co.*, 51 So. 882.

Action of assumpsit by warehousemen, when maintainable:—Warehousemen may maintain *assumpsit* for cotton "shipped by them as warehousemen only" and not delivered to the consignees, *provided,* the contract was made with them personally. *Fry* v. *Carter & Howell*, 25 Ala. 479.

Evidence—Opinion:—Where cotton was destroyed by fire, the following opinion was held to be properly receivable in evidence,

it being first shown that the witness had been engaged in the cotton business for many years. That if a blazing missile or burning coal had been applied to the cotton, it would have been immediately fired and would have burned with such rapidity that its extinguishment would have been improbable if not impossible. *Seals* v. *Edmonson*, 71 Ala. 509.

Pleading—Counts in complaint—Charge—Liability where there is gross negligence:—Where in an action against a railroad company for the loss of goods intrusted with it for transportation, the complaint contained two counts, one on the contract of common carriers, the other on a contract of warehouseman without hire, it appeared that the goods had been lost, while stored in the company's warehouse and after the plaintiff had had an opportunity to remove them, a charge asked by the defendant under the latter count, that the company is only responsible for injuries and losses occasioned by its gross negligence, is proper and should be given. *Mobile & G. R. R. Co.* v. *Prewitt*, 46 Ala. 63.

H.

Storage charges—Performance within one year—Promise by a third person to pay same—Statute of frauds:—A warehouseman sued a vendor for storage charges due on cotton which the former had shipped after receiving the promise of the defendant that he would pay the same. It was held, that the contract was not within that provision of the statute of frauds which requires all contracts which by the terms are not to be performed within one year, to be in writing. That the contract in question could be performed in less than one year, although it might continue for a much longer period. To facilitate the owner of the cotton in his dealings with the plaintiff, the defendant made the promise and the plaintiff surrendered his lien on the cotton in consideration of the promise of the defendant to secure him in payment of his charges. The contract by which this object was accomplished was supported by considerations moving directly between the parties and, although it might be said to be in form of an undertaking to answer for the debt of another, and, as a matter of fact, when performed, it may have that effect, it was not a contract coming within the third clause of the statute of frauds and need not have been in writing. *Prout & Robinson* v. *Webb*, 87 Ala. 593.

Same—Court of equity without jurisdiction to regulate or prescribe:—The prescribing of rates of charges for public service corporations or corporations conducting a business "affected with a public interest" is a legislative and not a judicial function; hence a court of equity is without jurisdiction, under the laws of this state, to restrain a public warehouseman from collecting alleged excessive charges in the absence of laws prescribing rates of storage. *Gulf Compress Co.* v. *Harris, Cortner & Co.*, 48 So. 477.

Same—If excessive, action at law for money had and received is proper remedy not bill in equity to restrain:—Complainants sought to restrain respondents, who were engaged in the compress and warehousing business, from making what was alleged to be excessive charges which would prove "practically ruinous" to complainants if they were obliged to pay the same. In the absence of a statute prescribing rates of storage the court held the bill must be dismissed as complainant had a plain, adequate and complete remedy at law for any excessive charges in an action for money had and received. *Id.*

Same—Valid claim for, up to date of accidental destruction of goods:—The plaintiff, a warehouseman, brought an action against the defendant who had become the owner of cotton stored with him for storage charges due thereon. It was shown to be the custom and practice of warehousemen in the locality where this warehouse was situated not to demand payment of storage charges until the cotton was ordered out of the warehouse and, therefore, the last holder of the receipt was liable for the accrued storage charges. The defendant contended, that as the custom was shown to be that the warehousemen did not demand storage charges until the cotton was ordered out, and that as in this case the cotton, having been burned, was never ordered out of the warehouse, that therefore there was no valid claim for storage charges. The court held this to be an extreme view to take of the practice of warehousemen and one which could not be sustained, that the practice was simply one of convenience and that the warehouseman could not be said to waive thereby his lien upon the goods for storage charges. Judgment given for plaintiff. *Jones* v. *Chaffin*, 102 Ala. 382.

Trover—Not maintainable against warehouseman where there is simply a failure to deliver on demand—Conversion—Gist of

action:—Where a warehouseman fails to deliver on demand goods intrusted to him, this fact alone will not entitle the owner to maintain trover against him. There must be a conversion before this action can be brought, and a conversion is not shown simply by a failure to deliver. The owner in such a case may either bring assumpsit for the breach of the contract, or he may sue in case for negligence. The limitations of the action of trover are closely drawn and it is essential in all cases to show a conversion which is the gist of the action. *Davis & Son* v. *Hurt,* 114 Ala. 146; *Ala. & Tenn. River R. R. Co.* v. *Kidd,* 35 Ala 209; *Baker* v. *Malone & Sons,* 126 Ala. 510.

Same—Will not lie where goods are taken by armed force:—An action of trover will not lie where goods are taken by an armed force without any negligence or complicity on the part of the bailee. *Abraham & Bro.* v. *Nunn,* 42 Ala. 51.

Same—Complaint must contain averment of ownership:—Where a complainant, in an action of trover, failed to aver that the persons, from whom the plaintiff was alleged to have purchased the cotton, were the owners thereof, and also failed to aver that the plaintiff was the owner of the cotton, it was held, that such complaint was demurrable on these grounds. *Weil Bros.* v. *Ponder,* 127 Ala. 296.

Same—Warehouseman may maintain—Warehouse receipt:—A warehouseman may maintain, in his own name, an action of trover against one who has converted property intrusted to him as bailee. In such case, where the warehouseman is the holder of the warehouse receipt which he issued for the goods, it is not necessary for him to show that the receipt has been indorsed to him in order to pass title to the property. *Baker* v. *Troy Compress Co.,* 114 Ala. 415.

M.

Pledge—Pledgee cannot be deprived of his rights by fraudulent removal of goods by pledgor:—Where the pledgee of property was wrongfully deprived of his possession by the pledgor, the pledge was not defeated thereby. Where, therefore, property thus wrongfully removed comes into the hands of a purchaser without notice of the pledge, the pledgee will be protected.

American Pig Iron Storage Warrant Co. v. *German, Exec., et al.*, 126 Ala. 194.

N.

Loss by fire:—A warehouseman is not liable for the value of goods destroyed by fire unless it can be shown that the loss occurred through his negligence. *Seals* v. *Edmonson*, 71 Ala. 509.

Same—Failure to sell cotton within a reasonable time—Not proximate cause of loss:—The defendants, warehousemen and commission merchants, had cotton in their possession belonging to the plaintiffs and received instructions from them to sell the same. The plaintiffs attempted to hold the defendants liable on the ground that, having failed to sell the cotton within a reasonable time after being instructed by the plaintiffs to do so, the cotton being subsequently destroyed by fire, that the loss would not have occurred had defendants obeyed instructions. The court held, that while it might be considered that it was the duty of the defendant to sell the cotton within a reasonable time after being instructed so to do, that its subsequent loss by fire could not be regarded as the natural and proximate consequences of the delay in selling. That, the burning of the cotton was an accidental or collateral injury, not usually following the result of such delay, that the defendants as commission merchants would be liable for any natural injury resulting from the delay to sell the cotton within a reasonable time, but they would not be liable for a loss suffered through an extraordinary cause having no relation to the delay except that it happened to be contemporaneous. *Lehman, Durr & Co.* v. *Pritchett*, 84 Ala. 512. (Doctrine of Patterson v. Wallace, 1 Stew. 48, not followed.) *Daugherty* v. *Am. Un. Tel. Co.*, 75 Ala. 168; *East Tenn., Va. & Ga. R. R. Co.* v. *Lockart*, 79 Ala. 315; *Burton* v. *Holly*, 29 Ala. 318.

Warranties—Stipulation in the contract that warehouse was to be fireproof—Effect thereof:—"If it was a term of the plaintiffs' contract, that their warehouse should be fireproof, and the defendant's cotton was lost by the plaintiffs' failure to provide such a house, then they should make good the damage consequent upon the breach of their undertaking." *Hatchett* v. *Gibson*, 13 Ala. 599.

Negligence—Insufficient allegations in complaint charging loss of compress receipts by warehousemen—Demurrer:—The plain-

tiff, a cotton broker, sued the defendant, a warehouseman, in tort, alleging that plaintiff during the present and previous seasons had deposited cotton in defendant's warehouse and that it had become an established custom between them that the defendant would, when bales of cotton were ordered out by the plaintiff, deliver such bales to a compress company, taking receipts therefor, and that subsequently, upon presentation of defendant's warehouse receipts for the given number of bales, the defendant would deliver to plaintiff the compress receipts for the number of bales represented by the defendant's warehouse receipt; that in respect of six bales it was discovered that defendant did not have compress receipts for the same, although plaintiff had ordered them shipped out. A demurrer was interposed upon, among other grounds, that the complaint failed to state a cause of action and that the negligence alleged against defendant are conclusions and fail to show sufficiently of what defendant's negligence consisted. It was held that if the delivery of plaintiff's cotton to the compress company was authorized, that delivery ended all duty and liability which the law imposed upon the defendant as warehouseman. In reference to the custom it was held to be necessary to allege and prove not only the existence of the custom but that such custom entered into and became a part of the contract between the parties. The complaint was held to be demurrable not only on the other grounds relied upon but also because it was insufficient to support a cause of action. *Bashinsky & Co.* v. *Seals*, 135 Ala. 357.

Evidence as to necessity of presence of watchman:—On the trial of a case against a warehouseman for the loss of cotton destroyed by fire while stored with him, evidence was admitted to show that the warehouse had been used for the storage of cotton for many years by the former owner; that during the time of its use, missiles had been shot off in the streets under circumstances similar to those in the present case, and that a watchman had not been employed to guard or protect it. It was held on appeal that this evidence was proper. *Seals* v. *Edmonson*, 71 Ala. 509.

Q.

Warehouse receipt—Issued in name of warehouseman—Pledge:—A warehouseman owning goods deposited in his own warehouse had receipts issued therefor and signed by his clerk

The receipts were pledged as collateral security without being indorsed. It was held that the legal effect of this transaction was to pass to the pledgee of such property, the constructive possession thereof which was sufficient to create a valid pledge, as between the parties, and also as to third persons, not having acquired prior or intervening rights. *Ala. State Bank* v. *Barnes,* 82 Ala. 607.

Same—Negotiability—Not negotiable in sense of bills of exchange—Not governed by law merchant:—A factor having in his possession goods for the purpose of sale, deposited them with the defendant warehouseman and took a receipt therefor in his own name. He thereupon pledged the receipt with a bank to secure payment of a loan. After default was made in payment, an action was brought by the owner of the goods against the warehouseman to recover their possession. The pledgee interposed the claim that as the receipts were negotiable he had taken title to the property under the warehouse laws of the state of Alabama. It further appeared, that in the contract of pledge there was the following sentence, "which cotton has been advanced upon by us for its full value." It was held that the warehouse receipt was not negotiable in the sense of bills of exchange and that it conveyed no greater title to the holder thereof than would the possession of the goods themselves. That the possession of the warehouse receipt by the factor was equivalent only to the possession of the property, and that, therefore, the only interest which the factor could pledge in such cotton was the actual interest which he had therein. Further, that the clause in the warehouse laws which states that warehouse receipts "given for any goods stored or deposited with any warehouseman" means only goods deposited by a person having *title* thereto. This section of the act proceeds upon the assumption that the receipt was so issued. *Commercial Bank of Selma* v. *Hurt,* 99 Ala. 130; *Allen, Bethune & Co.* v. *Maury & Co.,* 66 Ala. 10.

Same—Effect of transfer for a gambling debt—Not a contract:—The plaintiff brought an action in detinue against a warehouseman for the recovery of cotton represented by a receipt of which he was a *bona fide* holder. It appeared that the receipt had been issued to one who had transferred it to plaintiff's transferror in consideration of a gambling debt. Such person intervened in the suit and claimed title to the property on the ground that

he had not parted with such title as the consideration for which the assignment was made was void under the laws of the state. It was held, that the plaintiff was entitled to possession of the goods and that the transfer of the receipt by the original owner, who had indorsed the same in blank, had been the cause of the plaintiff securing possession of the same in this condition and, therefore, that he was estopped to deny the legality of such transfer. That the effect of the possession of the receipt was the same as the possession of the property which it represented, and that such a warehouse receipt was not a contract within the meaning of the statutes of the state of Alabama by which gambling contracts are declared to be void in the hands of a *bona fide* holder for value. *Danforth* v. *McElroy & Co.,* 121 Ala. 106; *Allen, Bethune & Co.* v. *Maury & Co.,* 66 Ala. 10.

Same—Issued to one not owner of the goods and deposited as collateral—Bank liable for conversion—Owner not estopped: —One in possession of goods for the purpose of sale, without authority deposits them in a warehouse, taking a receipt in his own name and procures a loan at a bank, using the receipt as collateral security. Subsequently the loan is paid and the receipt delivered by the bank to persons designated by the depositor. In an action of trover by the owner of the goods against the bank it was held although the bank had no knowledge of the absence of ownership in the depositor, that it was liable for conversion. That the warehouse receipt was the symbolic representation of the goods and as the receipt never rightfully came into the possession of the defendant it was not necessary to show a demand in order to establish conversion. The court further held that the owner, merely by sending the goods to one for the purpose of sale, was not estopped to assert his ownership against a pledgee who had accepted as security a warehouse receipt issued in the name of such person. *Peoples Savings Bank & Trust Co.* v. *Huttig Mfg. Co.*, 55 So. 929. See also *Traders Nat'l Bank* v. *Huttig Mfg. Co.*, 55 So. 928.

Same—One must be a legal holder to maintain action thereon: —The legal title to warehouse receipts must be in the plaintiff before he can maintain an action thereon under section 4222 (6135) of the code of this state. Where there was no averment in the complaint that the plaintiff had title to the receipt by indorsement, or, that the person to whom it was issued had affirmed

in writing that the property should be delivered to the plaintiff, it was held, that the plaintiff could not maintain an action for the recovery of the goods on such warehouse receipts, for he was not entitled to possession of them. *Baker* v. *Malone & Son*, 126 Ala. 510; *Weil Bros.* v. *Ponder*, 127 Ala. 296.

Same—Transferee may maintain action against warehouseman:—Under section 4222 of the Code of Alabama 1896 a transferee of a warehouse receipt upon which the words "not negotiable" do not appear may maintain an action against the warehouseman for failure to deliver on demand the goods represented by the receipt. *Bank of Dothan* v. *Dawsey & Co.*, 137 Ala. 584.

Same—Negotiability—Procured through fraud—Innocent purchaser protected:—Where a third person, innocently and in good faith, purchases a warehouse receipt for goods which his vendor procured by fraud, such third person will be protected, provided he gave value for the property or incurred some responsibility upon the credit of it, and took without notice of the fraud. *Allen, Bethune & Co.* v. *Maury & Co.*, 66 Ala. 10.

Same—Same—Action maintainable upon, although receipt not indorsed:—In an action by the owner of cotton which was destroyed while stored in a warehouse as a result of fire caused by sparks from defendant's locomotives, it was shown that part of the cotton was purchased for plaintiff by a third party with money furnished by plaintiff for that purpose; and that the warehouse receipts for the same were issued in the name of such third person and by him delivered to plaintiff unindorsed. It was held that plaintiff had shown sufficient title to the cotton to maintain his action for its destruction. *Alabama Great Southern R. R. Co.* v. *Clark*, 136 Ala. 450.

Same—As collateral—Delivery without indorsement—Effect.—The general rule, independent of statutory regulations, is conceded to be that the delivery, without indorsement, of a warehouse receipt payable to bearer, as collateral security, passes the legal title and vests possession of the property in the pledgee. The provisions contained in sec. 876 of the Code have been construed to mean that the indorsement of a warehouse receipt is necessary in order to pass the *legal* title thereto. Nevertheless neither the above section nor Sess. Acts, 1880, 1881, p. 133,

operate to prevent the transfer of a special property and constructive possession, by the delivery of the receipt without indorsement, sufficient to create a valid pledge as between the parties, and, as to third persons not having acquired prior intervening rights. *Ala. State Bank* v. *Barnes*, 82 Ala. 607.

Same—Same—In factor's name—Notice—What title acquired:—Where a warehouse receipt, issued in the name of a factor for cotton stored by him, recites the name of the owner, and is afterward transferred by the factor as collateral security for a note, on which note there is indorsed that such "cotton has been advanced upon * * * to its full value" by the factor, the pledgee in receiving the receipt has the equivalent of notice of the true state of the account between the owner and the factor, and becomes the purchaser of only such interest and claim in the cotton as the factor might assert. *Commercial Bank of Selma* v. *Lee;* 99 Ala. 493; *Commercial Bank of Selma* v. *Hurt*, 99 Ala. 130.

Same—Delivery of cotton to one in possession of the receipt without indorsement—Warehouseman liable:—A warehouse receipt for cotton, subject to the order of the person in whose name the receipt was given, or the bearer, is an admission that the cotton belongs to such person, and in an action to recover the cotton, or its value, it is no defense that it has been shipped and sold by direction of a party who had obtained possession of the receipt, without indorsement by the person stated to be the depositor in the receipt, and without authority from him to dispose of the same. *Lehman, Durr & Co.* v. *Marshall*, 47 Ala. 362.

Same—Pleadings—Suit by transferee against warehouseman—Complaint must allege indorsement to plaintiff—Also defendant's refusal to deliver:—A complaint in an action against a warehouseman on a warehouse receipt, failed to allege that the receipt had been indorsed to the plaintiff. On demurrer it was held that such failure was a fatal defect as under section 876 of the Code an indorsement of a warehouse receipt was necessary to pass the title. It was also held that the complaint in this case was further defective in that it did not aver a refusal on the part of the defendant to deliver the cotton stored. *Jemison* v. *Birmingham & A. R. R. Co.*, 125 Ala. 378; *Allen, Bethune & Co.* v. *Maury & Co.*, 66 Ala. 10; *Lehman, Durr & Co.* v. *Marshall*, 47

Ala. 362; *Capehart* v. *Granite Mills Co.*, 97 Ala. 353; *Baker* v. *Malone*, 126 Ala. 510. But see *Weil Bros.* v. *Ponder*, 127 Ala. 296.

Same—Same—Same—Complaint must allege to whom plaintiff advanced money on the receipt and to whom receipt endorsed:—In an action by a transferee of a warehouse receipt against the warehouseman the complaint failed to allege to whom plaintiff advanced money on the receipts and also to whom the receipts were indorsed. Upon demurrer the complaint held bad on above grounds. The court pointed out that the defendants were entitled to be made aware of the traversable facts upon which plaintiff relied. *Bank of Dothan* v. *Dawsey & Co.*, 136 Ala. 584.

Same—Same—Complaint must aver title in plaintiff's vendor:—A declaration which failed to aver that the person to whom the warehouse receipts were issued, and from whom plaintiff purchased the cotton, was the owner of the cotton, held defective on demurrer. A majority of the court also held that an indorsement of the warehouse receipt to the plaintiff was not necessary to pass title to him. Tyson, J., dissented from this proposition citing authorities given above. *Weil Bros.* v. *Ponder*, 127, Ala. 296. See also *Baker* v. *Troy Compress Co.*, 114 Ala. 415, and *Alabama Great Southern R. R. Co.* v. *Clark*, 136 Ala. 450.

R.

Bills of lading—Negotiability—Issued in name of fictitious person—Bona fide holder:—Bills of lading are not negotiable in the sense of bills of exchange and other commercial paper. Although it is true that under some circumstances a bill of exchange, payable to a fictitious person, may be negotiable, this principle does not apply to bills of lading. Therefore one who takes a bill of lading payable to a fictitious firm, and indorsed with such name is not a *bona fide* holder thereof. It was the duty of such person to inquire as to the name indorsed on the bill of lading, for it was from such firm that his rights as holder would emanate. *Jasper Trust Co.* v. *K. C., M. & B. R. R. Co.*, 99 Ala. 416.

S.

Custom, what not good:—A custom in the city of Montgomery, among merchants, factors and planters, dealing in cotton,

that warehouse receipts to deliver to a certain person, or his order, or the bearer, the number of bales of cotton specified in said receipts, are transferable by delivery, as money or bank bills, without indorsement, and that such transfer passes the cotton, without further inquiry or evidence of title than from what arises from the possession of such receipts, unless notice is given that such receipts have been lost or have fallen into the hands of some person who is not the owner or entitled to hold the same, is not a good custom. *Lehman, Durr & Co.* v. *Marshall*, 47 Ala. 362.

MONOLITH PORTLAND CEMENT COMPANY

CHAPTER III

ARIZONA

LAWS PERTAINING TO WAREHOUSEMEN

Receipt:—A warehouse receipt is an instrument in writing signed by a warehouse proprietor or his agent, describing the produce or commodity so as to identify it, stating the name of the owner, the terms of the contract for storage, and agreeing or directing that the produce or commodity be delivered to the order or assigns of a specified person. Rev. St. Ariz. 1901, sec. 4153.

Owner as manager to give receipt:—It shall be the duty of every person keeping, managing, controlling or operating, as owner or agent or superintendent of any company or corporation, any warehouse where any produce or commodity is stored to deliver to the owner of such produce or commodity a warehouse receipt therefor, bearing the full name of those operating said warehouses, which receipt shall bear the date of issuance, and shall state from whom received, the number of sacks, if sacked, the number of bushels or pounds, the condition of the same, and the terms and conditions upon which it is stored. *Id.* sec. 4154.

Form of receipt:—The receipt required in the preceding section may be in form as follows:

(Name of Firm or Company.)

No..... (Place and Date.)

Received in store from (name of consignor), (quantity), gross, ... lbs.; tare, ... lbs., No. (give here grade and name of commodity), at owner's risk of unavoidable danger, to be delivered at this warehouse upon return of this receipt properly indorsed and payment of charges. This receipt negotiable when duly indorsed by consignor. Storage to (here give amount and date).

Signed (name of Firm or Company).

(Name of Agent) Agent.

Id. sec. 4155.

Fraudulent receipts:—No person shall issue any receipt or other voucher as provided herein for any produce or commodity not actually in store at the time of issuing such receipt, or issue any receipt in any respect fraudulent in its character, either as to its date or the quantity, quality or grade of such property, or duplicate or issue a second receipt for the same while any former receipt is outstanding for the same property, or any part thereof, without writing across the face thereof "duplicate." *Id.* sec. 4156.

Property stored to be kept separate:—No person operating any warehouse where any produce or commodity is stored shall mix any produce or commodity of different grades together, or deliver one grade for another, or in any way tamper with the same while in his possession or custody with a view to securing any profit to himself or any other person, and in no case mix different grades together while in store: *Provided*, That nothing in this title shall be construed to prohibit any person operating any warehouse where any produce or commodity is stored from keeping, piling or storing any produce or commodity offered for storage separate and apart from other produce or commodity, by marking such produce in such manner that it can be identified and delivered on presentation of the warehouse receipt or voucher which was given for the same, in which case the receipt given shall designate the mark on the produce or commodity so stored. *Id.* sec. 4157.

Property not to be transferred without consent of owner:—No person operating any warehouse shall sell, incumber, ship, transfer or in any manner remove, or permit to be shipped, transferred or removed, from the place of storage at which the receipt is given, any produce or commodity for which a receipt has been given by him as aforesaid for storing, without the written consent of the holder of the receipt. *Id.* sec. 4158.

Owner entitled to property on presentation of receipt and charges:—On the presentation of the receipt given by any person operating any warehouse for any produce or commodity, and on payment of all the charges due thereon, the owner shall be entitled to the immediate possession of the commodity named in the receipt, and it shall be the duty of such warehouseman, or other person having possession thereof, to deliver such commodity

to the owner of such receipt without further expense to such owner and without unnecessary delay. *Id.* sec. 4159.

Penalties for violations:—Any person who shall violate any of the provisions of this title shall be liable to indictment, and, upon conviction, shall be fined in any sum not exceeding five thousand dollars, or be imprisoned in the territorial prison not exceeding five years, or both; and in case of a corporation, the person acting for the corporation shall be liable for a like punishment upon indictment and conviction. And every person aggrieved by a violation of this title may have and maintain an action at law against the person or corporation violating any of its provisions to recover all damages, immediate or consequential, which he or they may have sustained by reason of such violation, before any court of competent jurisdiction, whether such person shall have been convicted under this title or not. *Id.* sec. 4160.

Checks and receipts negotiable:—All checks and receipts given by any person operating any warehouse for any produce or commodity stored or deposited are hereby declared negotiable, and may be transferred by indorsement of the party to whose order such check or receipt was given or issued, and such indorsement shall be deemed a valid transfer of the commodity represented by such receipt, and may be made either in blank or to the order of another. *Id.* sec. 4161.

Transfer of title:—All the title to the produce or commodity which the first holder of a warehouse receipt had when he received it passes to every subsequent indorsee therof in good faith, and for value, in the ordinary course of business, with like effect and in like manner as in the case of a bill of exchange. *Id.* sec. 4162.

Receipt made to "bearer":—When a warehouse receipt is made to "bearer" or in equivalent terms, a simple transfer thereof by delivery conveys the same title as an indorsement. *Id.* sec. 4163.

Receipt does not alter obligations of proprietor:—A warehouse receipt does not alter the rights or obligations of the warehouse proprietor as defined in this title unless it is plainly inconsistent therewith. *Id.* sec. 4164.

Duplicate receipts:—A warehouse proprietor must subscribe and deliver to the bailor, on demand, any reasonable number of warehouse receipts, not exceeding three (one original and the others marked "Duplicate," and the original to state the number of duplicates issued) of the same tenor, expressing truly the original contract for storage, and if he refuses to do so, the bailor may take the produce or commodity from him, and recover from him besides all damages thereby occasioned. *Id.* sec. 4165.

Proprietor exonerated from liability:—A warehouse proprietor is exonerated from liability for produce or commodity by delivery thereof, in good faith, to any holder of an original warehouse receipt thereof, properly indorsed, or made in favor of the bearer. *Id.* sec. 4166.

Surrender of receipt:—When a warehouse proprietor has given a warehouse receipt, or other instrument, substantially equivalent thereto, he may require its surrender, or a reasonable indemnity against claims thereon, before delivering the produce or commodity. *Id.* sec. 4167.

Every person, firm or corporation engaged in the business of storing for hire; goods, wares, merchandise, grain, hay, provisions or other products, commodities or personal property, shall be deemed and held to be a warehouseman. Laws Arizona, 1907. p. 59, Chap. 47, sec. 1.

Any property in a warehouse, which is perishable, or upon which any charges have been due and unpaid for a period of six months or over, may be sold by the warehouseman in the same manner, and under the same regulations and provisions as are prescribed by Paragraphs 873 and 874, Sections 113 and 114 of Chapter 7 of Title 13, of the Revised Statutes of Arizona, 1901, for the sale of freight and baggage; and all the provisions of said paragraphs, not inconsistent with this act are hereby made applicable to sales made by warehousemen. *Id.* sec. 2.

Any railroad company, express company or common carrier, having any undelivered baggage or freight in its possession, may, after first giving five days' notice in writing by mail, to the consignee or owner thereof, if known, of its intention so to do, deliver such baggage, or freight, to a warehouseman for storage, upon such warehouseman's paying to the railroad company, express company or common carrier, the amount of freight or

charges due thereon. The warehouseman shall have a lien thereon for the amount of freight and charges so paid, with interest at the legal rate, as well as for storage. If said amounts are not paid to the warehouseman within six months after such freight or baggage is so received by him, he may sell the same, in the manner and subject to the same provisions as heretofore prescribed for the sale of other property on which storage charges are unpaid for a period of six months. *Id.* sec. 3.

This act shall take effect and be in force from and after its passage. Approved March 18, 1907. *Id.* sec. 4.

NOTE. There seem to be no decisions in Arizona affecting warehousemen.

CHAPTER IV

ARKANSAS

LAWS PERTAINING TO WAREHOUSEMEN

Warehousemen not to issue receipts until goods are under his control:—No warehouseman, wharfinger or other person shall issue any receipt or voucher for any goods, wares, merchandise, cotton, grain, flour or other produce or commodity to any person or persons purporting to be the holder or holders, owner or owners thereof, unless such goods, wares, merchandise, cotton, grain, flour or other produce or commodity shall have been actually received into the store or upon the premises of such warehouseman, wharfinger or other person, and shall be in the store or on the premises aforesaid, and under his control at the time of issuing such receipt. Kirby's Digest, 1904, sec. 524.

No warehouseman, wharfinger or other person shall issue any receipt or other voucher upon any goods, wares, merchandise, cotton, grain, flour, or other produce or commodity to any person or persons for any money loaned or other indebtedness, unless such goods, wares, merchandise, cotton, grain, flour or other produce or commodity shall be, at the time of issuing such receipt, in the custody of such warehouseman, wharfinger or other person, and shall be in store or upon the premises and under his control at the time of issuing such receipt or other voucher as aforesaid. *Id.* sec. 525.

No warehouseman, wharfinger or other person shall issue any second or duplicate receipt for any goods, wares, merchandise, cotton, grain, flour or other produce or commodity, while any former receipt for such goods, wares, merchandise, cotton, grain, flour or other produce or commodity, as aforesaid, or any part thereof, shall be outstanding and uncancelled, without writing across the face of the same, "Duplicate," *Id.* sec. 526.

No warehouseman, wharfinger or other person shall sell or incumber, ship or transfer, or in any manner remove, or permit to be shipped, transferred or removed beyond his control, any

such goods, wares, merchandise, cotton, grain, flour or other produce or commodity, for which a receipt shall have been given by him, as aforesaid, whether received for storing, shipping, grinding, manufacturing or other purpose, without the written assent of the person or persons holding such receipt. *Id.* sec. 527.

No master, owner or agent of any boat or vessel, of any description, forwarder or officer or agent of any railroad, transfer or transportation company, or other person shall sign or give away any bill of lading, receipt or other voucher or document for any merchandise or property by which it shall appear that such merchandise or property has been shipped on board of any boat, vessel, railroad car or other vehicle, unless the same shall have been actually shipped and put on board, and shall be at the time actually on board or delivered to such boat, vessel, car or other vehicle, or to the owner or owners thereof, or his or their agent or agents, to be carried and conveyed as expressed in such bill of lading, receipt or other voucher or document. *Id.* sec. 528.

All receipts issued or given by any warehouseman, wharfinger or other person or firm, and all bills of lading, transportation receipts and contracts of affreightment issued or given by any person, boat, railroad, transportation or transfer company for goods, wares, merchandise, cotton, grain, flour or other produce or commodity, shall be and are hereby made negotiable by written indorsement thereon, and delivery in the same manner as bills of exchange and promissory notes; and no printed or written conditions, clauses or provisions inserted in or attached to any such receipts, bills of lading or contracts shall in any way limit the negotiability, or affect any negotiation thereof, nor in any manner impair the right and duties of the parties thereto, or persons interested therein; and every such condition, clause or provision purporting to limit or affect the rights, duties or liabilities created or declared in this act shall be void and of no force or effect. *Id.* sec. 529.

Above section construed—Bill of lading—Transfer without indorsement:—If a written indorsement is necessary under Kirby's Digest, secs. 529 and 530, to transfer the legal title to the property described in a bill of lading, a transfer of one without indorsement as security for advances made is sufficient to pass the equitable title therein. *Turner* v. *Israel*, 64 Ark. 244.

Warehouse receipts given by any warehouseman, wharfinger, or other person or firm for any goods, wares, merchandise, cotton, grain, flour or other produce or commodity, stored or deposited, and all bills of lading and transportation receipts of every kind given by any carrier, boat, vessel, railroad, transportation or transfer company, may be transferred by indorsement in writing thereon, and the delivery thereof so indorsed, and any and all persons to whom the same may be transferred shall be deemed and held to be the owner of such goods, wares, merchandise, cotton, grain, flour or other produce or commodity, so far as to give validity to any pledge, lien or transfer given, made or created thereby, as on the faith thereof, and no property so stored or deposited, as specified in such bills of lading or receipts, shall be delivered except on surrender and cancellation of such receipts and bills of lading; *provided,* that all such receipts and bills of lading which shall have the words, "Not Negotiable," plainly written or stamped on the face thereof, shall be exempt from the provisions of this act. Kirby's Digest, 1904, sec. 530.

Any warehouseman, wharfinger, forwarder or other person who shall violate any of the provisions of this act shall be deemed guilty of a criminal offense, and upon indictment and conviction shall be fined in any sum not exceeding five thousand dollars, or imprisoned in the penitentiary of this state not exceeding five years, or both; and all and every person or persons aggrieved by the violation of any of the provisions of this act may have and maintain an action at law against the person or persons, corporation or corporations violating any of the provisions of this act, to recover all damages which he or they may have sustained by reason of any such violation as aforesaid, before any court of competent jurisdiction, whether such person or persons shall have been convicted of fraud as aforesaid under this act or not. *Id.* sec. 531.

All provisions of this act shall apply to bills of lading, and to all persons or corporations, their agents or servants, that shall or may issue bills of lading of any kind or description, the same as if the words "forwarder" and "bills of lading" were mentioned in every section of said act. *Id.* sec. 532.

So much of the preceding sections of this act as forbids the delivery of property except on surrender and cancellation of the original receipt or bill of lading, or the indorsement of such

delivery thereon in case of partial delivery, shall not apply to property replevied, or removed by operation of law. *Id.* sec. 533.

When any goods, merchandise or other property shall have been received by any warehouseman, commission merchant, or common carrier and shall not be claimed or received by the owner, consignee or other authorized person for the period of six months from the time the same should have been called for, it shall be lawful for such warehouseman, commission merchant or carrier to sell such goods, merchandise or other property to the highest bidder for cash, first having given twenty days' notice of the time and place of sale to the owner, consignee or consignor, when known, and by advertisement for two insertions in a daily or weekly newspaper published in the county where such sale is to take place, the proceeds of such sale to be applied to the payment of freight, storage and charges due, and the cost of advertising and making said sale, and if any surplus is left after paying freight, storage, cost of advertising and all other just and reasonable charges, the same shall be paid over to the rightful owner of said property at any time thereafter, upon demand being made therefor. A record of such sale shall be kept, which shall be open to the inspection of all parties interested therein. *Id.* sec. 8002.

The purchaser or assignee of the receipt of any ginner, warehouse-holder or cotton factor or other bailee for any cotton, corn or other farm products in store or custody of such ginner, warehouseman, cotton factor, or other bailee shall not be held to be an innocent purchaser of any such produce against the lien of any landlord or laborer. *Id.* sec. 5036.

DECISIONS AFFECTING WAREHOUSEMEN

A.

Bailment—Burden of proof—Erroneous instruction to jury:— The following instruction given to the jury held, on appeal, to be reversible error: "The loss of the cotton being admitted, the burden is upon the defendant to show that such loss was not caused by the negligence of him or his servants; and, unless you find by a preponderance of the evidence that the loss was not

caused by such negligence, your verdict will be for the plaintiff."

Further held that the burden was upon plaintiff to show defendant's negligence. *James* v. *Orrell*, 68 Ark. 284.

B.

Ordinary care—Warehouseman not an insurer:—A warehouseman is bound only to the exercise of reasonable and ordinary care in the preservation of goods intrusted to him. He is not an insurer of such goods and he is not responsible for their loss unless occasioned by his fault or negligence. *Little Rock & F. S. Ry. Co.* v. *Hunter*, 42 Ark. 200; *Kansas City & F. S. Ry. Co.* v. *McGahey*, 63 Ark. 344; *Murphy* v. *Lemay*, 32 Ark. 223; *Union Compress Co.* v. *Nunally*, 67 Ark. 284; *Burr & Co.* v. *Daugherty*, 21 Ark. 559.

Conversion—Sale by son of warehouseman—Ratification:—The son of a warehouseman sold plaintiff's goods which were stored. It appeared that the son thought the goods had been abandonded; further that the warehouseman accepted part of the proceeds of the sale and intended to collect the balance. *Held*, that this was a ratification of the son's acts and that it constituted a conversion of the goods for which the warehouseman was liable. *Creson* v. *Ward*, 66 Ark. 209.

H.

Lien—None for other indebtedness—Waiver of—Vendee:—A warehouseman has no lien upon goods in his possession for any indebtedness to him from the owner disconnected with the charges upon the goods. A warehouseman having placed his refusal to deliver goods on the ground of a claim against the owner disconnected with the goods, cannot afterwards set up his lien for storage as an excuse for not having delivered them. Nor is it necessary, after refusal to deliver on such ground for the owner to make formal tender of the amount due for storage. *Scott* v. *Jester*, 13 Ark. 437.

Storage Contract—Provision that was subject to all "rules and regulations governing the storage of apples"—Consent of general manager to allow space occupied by apples sold to be filled by others, binding on warehouseman—Counterclaim—Parol evidence:—The plaintiffs, warehousemen, sued defendants for stor-

age charges upon a written contract providing the charge would be fifty cents per barrel for space necessary for 2,800 barrels. The contract further provided that it was subject to all the warehouseman's "rules and regulations governing the storage of apples." Defendants filed a counterclaim alleging that at the time of signing such contract they explained to plaintiff's general manager that they were apple dealers and would desire to replace barrels sold out of the warehouse by other barrels during the season; that the general manager consented to this; that they attempted to replace 722 barrels which had been sold from the warehouse and plaintiffs refused to allow them to do so; and that because of plaintiff's refusal the apples decayed resulting in a loss to defendants of $1,277.30. The evidence showed plaintiffs had printed rules and regulations but there was no reference in them to the refilling of vacated space. Under peremptory instruction, the jury returned a verdict for the full amount of the storage charges. On appeal it was held that as the contract was silent on the subject of replacing barrels for those sold, parol evidence was admissible to show what the agreement in this regard was, and that the consent of plaintiff's general manager to allow this to be done was binding upon them and was a rule or regulation within the meaning of the contract; that all of these facts should have been presented to the jury under a proper charge, but that the defendants were only entitled to recover on their counterclaim the cost of storage for the 722 barrels and not for decay resulting from their failure to either sell them or store them elsewhere. *Montgomery & Co.* v. *Arkansas Cold Storage & Ice Co.*, 124 S. W. 768.

L.

Replevin—Storage charges must be paid before it will lie—Demand:—Replevin will not lie for property legally in the possession of another who has a lien upon it for charges, until such charges be paid, nor until after demand and refusal or conversion. *Hill* v. *Robinson,* 16 Ark. 90; *Burr & Co.* v. *Daugherty,* 21 Ark. 559.

N.

Loss of goods—Destruction after reaching hands of warehouseman, but before reaching place of storage:—Where a warehouseman agrees to receive goods at another than the place of

storage, he is bound to exercise ordinary diligence in their removal and preservation from waste; and if from the want of common and reasonable diligence in their removal they are destroyed, he would be responsible to the bailor in the proper form of action. *Burr & Co.* v. *Daugherty*, 21 Ark. 559.

Negligence—What constitutes—Destruction by fire:—In an action against a railway company liable as warehousemen, for goods destroyed in its depot, it appeared that a large quantity of cotton was piled on its platform near the depot and a short distance from the railway track; that at the time the weather was very dry; that the cotton was highly inflammable and without protection; that about fifteen minutes after a train passed, the cotton caught fire, which extended to the depot and destroyed plaintiff's goods. *Held,* that there was evidence to sustain a finding that defendant was guilty of negligence. *Railway* v. *Dodd,* 59 Ark. 317.

Same—Same—Same—Allowing door to remain open and out of repair—Warehouseman liable:—A warehouse was located contiguous to railroad tracks along which engines were constantly passing. A large quantity of unbaled cotton was kept there exposed. There were holes and cracks in the corrugated iron wall of the shed next to the railroad tracks. A door was permitted to get out of repair so it could not be closed and it so remained for a considerable time. Under above circumstances it was held the warehouseman was liable for the destruction by fire of cotton so stored, as he was guilty of negligence in his custody thereof. *Gulf Compress Co.* v. *Harrington,* 119 S. W. 249.

Destruction by a mob:—Where goods in the hands of one liable as a warehouseman were destroyed by a mob, and no evidence was given to show negligence on his part, it was held that he was not liable for the value of the same. *Pacific Express Co.* v. *Wallace,* 60 Ark. 100.

P.

Insurance—Company may insure for full value:—Where a compress company insured goods intrusted with it for compression, to their full value and in its own name it was held lawful, and that in the case of loss it could recover the full amount of the policy. After deducting the amount of its interest it would hold the balance of the fund in trust for the owners of the

goods. *California Ins. Co.* v. *Union Compress Co.*, 133 U. S. 387; *Home Ins. Co.* v. *Balto. Warehouse Co.*, 93 U. S. 527; *London &N. W. Ry Co.* v. *Glyn*, 1 Ell. & E. Q. B. 652.

Q.

Warehouse receipt—Delivery of cotton to one holding unindorsed receipt issued in name of another—Showing a custom to do this of no avail—Warehouseman liable:—A compress company which delivered cotton to one upon the presentation of an unindorsed warehouse or compress receipt which it had issued in the name of another person held liable to the owner, in the absence of negligence on his part, for the value of the cotton thus improperly delivered. Nor will it avail the warehouseman to show it was customary to treat all such receipts as though they were made payable to bearer. *Citizens Bank* v. *Arkansas Compress & Warehouse Co.*, 80 Ark. 601.

Same—Effect of transfer:—A warehouseman's receipt for cotton stored in his warehouse is such a document of title that its transfer, by indorsement or otherwise, clothes the transferee with the legal title and constructive possession of the cotton; and this without notice to the warehouseman of the transfer or agreement by him to hold for the transferee. *Durr et. al.* v. *Hervey*, 44 Ark. 301.

Same—Attempted exemption from liability for loss by fire—Of no effect where negligence shown—Receipt construed against warehouseman:—A warehouse receipt contained a provision that the warehouseman was "Not responsible for loss by fire, acts of Providence, natural shrinkage, old damage, or for failure to note concealed damage." In a case where the jury was justified in finding the defendant liable as the loss by fire was occasioned by the warehouseman's negligence, it was held the provision in regard to non-liability for loss by fire was not applicable where negligence was shown. The receipt having been prepared by the warehouseman is to be construed against him. *Gulf Compress Co.* v. *Harrington*, 119 S. W. 249.

Same—Warehouseman bailee of every transferee:—By executing the receipt the warehouseman consents to become the bailee of any one to whom it may be transferred, and to become such bailee from the time of transfer. *Durr et al.* v. *Hervey*, 44 Ark. 301.

Same—Negotiability—Lost unindorsed receipt—Owner protected:—Although by statute (Kirby's Digest sec. 529) warehouse receipts are declared to be negotiable in the same manner "as bills of exchange and promissory notes" nevertheless it does not follow that all the consequence incident to the indorsement of bills of exchange before maturity, ensue from the negotiation of warehouse receipts. Where a receipt issued in the name of the owner of the goods is without his negligence lost without being endorsed, the finder acquires no title to the goods represented. A warehouseman delivering cotton to the finder of such receipt is liable to the owner for the value of the goods so delivered. *Citizens Bank* v. *Ark. Compress and Warehouse Co.*, 80 Ark. 601. See also *Shaw* v. *Railroad Co.*, 101 U. S. 557.

Same—As collateral—Indorsement, effect of:—The indorsement and delivery of a warehouse receipt by the owner of the property described in the receipt, to secure a debt, passes the title of the property to the indorsee, as against the claims of purchasers and creditors. *Bank of Newport* v. *Hirsch*, 59 Ark. 225.

Same—Same—Wrongful delivery—Warehouseman liable to bank:—Where a compress company knew that all of the cotton belonging to one of its customers had, by the use of its warehouse receipts been borrowed upon at a bank and the compress company delivered to such customer a quantity of cotton called for in a receipt which he presented which receipt was in the name of another customer and unindorsed, it was held the compress company was liable to the bank to the extent of its loss. *Citizens Bank* v. *Ark. Compress and Warehouse Co.*, 80 Ark. 601.

R.

Bill of lading—Recitals therein as to condition of the goods:—A recital in a bill of lading that the goods were received "in apparent good order" refers only to the external condition of the goods, and as between the original parties is only prima facie proof of the true condition of the goods when received. *Ry. Co.* v. *Neel*, 56 Ark. 279.

Same—Transfer without indorsement—Equitable title:—By the statutes of this state bills of lading are made negotiable like those of exchange and promissory notes and may be transferred by written indorsement. (Sand. H. Dig. secs. 509 and 510.)

Assuming that these statutes require written indorsement to transfer the legal title it is, nevertheless, true that the transfer without indorsement, like the transfer of an unindorsed note, would be sufficient to pass the equitable title. *Turner* v. *Israel*, 64 Ark. 244.

Same—What constitutes possession or control—Estoppel:—By the Act of March 15, 1887 (sec. 505), common carriers, warehousemen and others are prohibited from issuing a receipt, bill of lading or other voucher for any goods unless the same are in store or upon the premises and under the control of such warehouseman or carrier at the time of the issuance thereof. This statute gives a right of action against any person aggrieved by the issuance of such receipt or voucher contrary to its terms. It appeared that a carrier issued bills of lading for goods which were in possession of a compress company pursuant to an arrangement therewith. It was held that the carrier was not estopped as to third persons from denying that the property represented by the bill of lading was not in his possession or under his control. *Martin* v. *Railway Co.* 55 Ark. 510.

CHAPTER V

CALIFORNIA

LAWS PERTAINING TO WAREHOUSEMEN

The Uniform Warehouse Receipts Act is in force in California. See Calif. Stats. 1909, p. 437, also this volume p. 1.

Deposit for hire:—A deposit not gratuitous is called storage. The depositary in such case is called a depositary for hire. Kerr's Civ. Code, 1905, sec. 1851.

Degree of care required of depositary for hire:—A depositary for hire must use at least ordinary care for the preservation of the thing deposited. *Id.* sec. 1852.

Rate of compensation for fraction of a week, etc.:—In the absence of a different agreement or usage, a depositary for hire is entitled to one week's hire for the sustenance and shelter of living animals during any fraction of a week, and to half a month's hire for the storage of any other property during any fraction of a half month. *Id.* sec. 1853.

Termination of deposit:—In the absence of an agreement as to the length of time during which a deposit is to continue, it may be terminated by the depositor at any time, and by the depositary upon reasonable notice. *Id.* sec. 1854.

Same—(on payment of charges to become due):—Notwithstanding an agreement respecting the length of time during which a deposit is to continue, it may be terminated by the depositor on paying all that would become due to the depositary in case of the deposit so continuing. *Id.* Sec. 1855.

Carriers, etc., may retain goods until charges paid:—When any goods, merchandise, or other property has been received by any railroad or express company, or other common carrier, commission merchants, innkeepers or warehousemen, for transportation or safe keeping, and are not delivered to the owner, consignee, or other authorized person, the carrier, commission mer-

chant, innkeeper, or warehouseman, may hold or store the same with some responsible person until the freight and all just and reasonable charges are paid. Kerr's Pol. Code, 1905, Sec. 3152.

Property unclaimed within sixty days to be sold:—If no person calls for the property within sixty days from the receipt thereof, and pays freight and charges thereon, the carrier, commission merchant, innkeeper, or warehouseman may sell such property, or so much thereof as will pay freight and charges, to the highest bidder at public auction, having first caused such notice of sale to be given as is customary in sales of goods by auction at the place where said goods may be held or stored. If any surplus is left, after paying freight, storage, expenses of sale, and other reasonable charges, the same must be paid over to the owner of such property, upon demand being made therefor at any time within sixty days after the sale. *Id.* Sec. 3153.

Proceeds unclaimed, where to go:—If the owner or his agent fails to demand such surplus within sixty days of the time of such sale, then it must be paid into the county treasury, subject to the order of the owner. *Id.* Sec. 3154.

Carrier's responsibility ceases, when:—After the storage of goods, merchandise, or property, as herein provided, the responsibility of the carrier ceases, nor is the person with whom the same is stored liable for any loss or damage on account thereof, unless the same results from his negligence or want of proper care. *Id.* Sec. 3155.

Property upon which advances are made may be sold, when:—When any commission merchant or warehouseman receives on consignment produce, merchandise, or other property, and makes advances thereon, either to the owner or for freight and charges, he may, if the same is not paid to him within sixty days from the date of such advances, cause the produce, merchandise, or property on which the advances were made, to be advertised and sold as provided herein. *Id.* Sec. 3156.

Fees of officers:—The fees of officers under this chapter are the same allowed for similar services in other cases provided in this code, to be paid by the taker-up or finder and recovered of the owner. *Id.* Sec. 3157.

Proceedings in sale of unclaimed goods:—All proceedings had under this article shall be governed entirely by the pro-

visions hereof, and shall not be controlled or affected by the provisions of article two, of chapter III, of title VII, of part IV, of division III of the Civil Code of the State of California. *Id.* Sec. 3158 as added by Act approved June 16, 1913, in effect August 10, 1913, Statutes of California 1913, Chapter 568, page 980.

Inspection of food-producing establishments:—Every building, room, basement or cellar, occupied, or used as a bakery, confectionery, cannery, packinghouse, slaughterhouse, restaurant, hotel, grocery, meat market, or other place or apartment, used for the production, preparation for sale, manufacture, packing, storage, sale or distribution of any food, shall be properly lighted, drained, plumbed and ventilated, and conducted with strict regard to the influence of such conditions upon the health of the operatives, employees, clerks or other persons therein employed, and the purity and wholesomeness of the food therein produced, kept, handled or sold; and for the purpose of this act the term "food" shall include all articles used for food, drink, confectionery or condiment, whether simple or compound, and all substances and ingredients used in the preparation thereof. Kerr's Biennial Supp. 1906-1909, pp. 1965-1968, Sec. 1.

The floors, sidewalks, ceilings, furniture, receptacles, utensils, implements and machinery of every establishment or place where food is manufactured, packed, stored, sold or distributed, shall at no time be kept in an unclean, unhealthful or unsanitary condition; and for the purposes of this act, unclean, unhealthful and unsanitary conditions shall be deemed to exist if food in the process of manufacture, preparation, packing, storing, sale or distribution is not securely protected from flies, dirt, unsanitary conditions, and as far as may be necessary, by all reasonable means from all other foreign or injurious contamination; and if the refuse, dirt, and the waste products subject to decomposition and fermentation incident to the manufacture, preparation, packing, storing, selling and distributing of food are not removed daily; and if all trucks, trays, boxes, baskets, buckets, and other receptacles, chutes, platforms, racks, tables, shelves, and all knives, saws, cleavers, and all other utensils, receptacles, and machinery, used in moving, handling, cutting, chopping, mixing, canning, and all other processes used in the preparation of food are not thoroughly cleaned daily; and if the clothing of opera-

tives, employees, clerks, and other persons therein employed, is unclean, or if they dress or undress, or leave or store their clothing therein. *Id.* Sec. 2.

The side walls and ceilings of every bakery, confectionery, hotel and restaurant kitchen, shall be well plastered, or ceiled, with metal or lumber, or shall be oil painted or kept well lime washed, or otherwise in a good sanitary condition and all interior woodwork of every bakery, confectionery, hotel and restaurant kitchen, shall be kept well oiled or painted with oil paint, and be kept washed clean with soap and water or otherwise kept in a good sanitary condition; and every building, room, basement or cellar, occupied or used for the preparation, manufacture, packing, storage, sale or distribution of food, shall have an impermeable floor, made of cement or tile laid in cement, brick, wood or other suitable, non-absorbent material which can be flushed and washed clean with water. *Id.* Sec. 3.

The doors, windows and other openings of every food producing or distributing establishment, where practicable, shall be fitted with stationary or self-closing screen doors and wire window screens, of not coarser than fourteen mesh wire gauze. *Id.* Sec. 4.

Every building, room, basement or cellar, occupied or used for the preparation, manufacture, packing, canning, sale or distribution of food, shall have convenient toilet or toilet rooms, separate and apart from the room or rooms where the process of production, manufacture, packing, canning, selling or distributing is conducted. The floors of such toilet rooms shall be of cement, tile laid in cement, wood, brick or other non-absorbent material, and shall be washed and scoured daily. Such toilets shall be furnished with separate ventilating pipes or flues, discharging into soil pipes, or on the outside of the building in which they are situated. Lavatories and washrooms shall be adjacent to toilet rooms, and shall be supplied with soap, running water and towels, and shall be maintained in a clean and sanitary condition. Operatives, employees, clerks and all persons who handle the material from which food is prepared, or the finished product, before beginning work and immediately after visiting a toilet or lavatory shall wash their hands and arms thoroughly in clean water. *Id.* Sec. 5.

Cuspidors, for the use of operatives, employees, clerks and other persons, shall be provided, and each cuspidor shall be

emptied and washed out daily with disinfectant solution and not less than five ounces of such solution shall be left in each cuspidor while in use. No operative, employee, clerk or other person, shall expectorate or discharge any substance from his nose or mouth, on the floor or interior side wall of any building, room, basement, or cellar where the production, manufacture, packing, storing, preparation or sale of any food product is conducted. *Id.* Sec. 6.

No person shall be allowed to, nor shall he, reside or sleep in any room of a bake shop, public dining room, hotel or restaurant kitchen, confectionery, or other place where food is prepared, produced, manufactured, served or sold. *Id.* Sec. 7.

No employer shall require, permit or suffer any person to work, nor shall any person work, in a building, room, basement, cellar, place or vehicle, occupied or used for the production, preparation, manufacture, packing, storage, sale, distribution or transportation of food, who is afflicted or affected with any venereal disease, small pox, diphtheria, scarlet fever, yellow fever, tuberculosis, consumption, bubonic plague, Asiatic cholera, leprosy, trachoma, typhoid fever, epidemic dysentery, measles, mumps, German measles, whooping-cough, chicken pox, or any other infectious or contagious disease. *Id.* Sec. 8.

The members of the state board of health, inspectors and agents appointed by said board, and all local health officers and inspectors, shall have full power at all times to enter every building, room, basement, cellar, or any place occupied or used, or suspected of being occupied or used, for the production, manufacture, preparation, storage, sale or distribution of food, and to inspect the premises and all utensils, implements, receptacles, fixtures, furniture and machinery used as aforesaid, and if, upon inspection, any such building, room, basement, cellar, or any such place, vehicle, employer, operative, employee, clerk, driver or other person, is found to be in violation or violating any of the provisions of this act, or if the production, preparation, manufacture, packing, storing, sale or distribution of food is being conducted in a manner detrimental to the health of the employees or operatives or to the character or quality of the food therein produced, manufactured, packed, stored, sold, distributed or conveyed, the officer or inspector making the examination shall at once make a written report of the same to the district attorney of the county who shall prosecute all persons

violating any of the provisions of this act, and also to the state board of health. The state board of health, from time to time, as in its discretion it may determine, may publish such reports in its monthly bulletin. *Id.* Sec. 9.

All buildings, rooms, basements, cellars, and other places and things, kept, maintained or operated, or which are, in violation of the provisions of this act or any of them, and all food produced, prepared, manufactured, packed, stored, kept, sold, distributed or transported, in violation of the provisions of this act or any of them, are hereby declared to be public nuisances, dangerous to health. Such nuisances may be abated or enjoined, in an action brought for that purpose by the local or state board of health, or they may be summarily abated in the manner provided by law for the summary abatement of public nuisances dangerous to health. *Id.* Sec. 10.

Any person, firm or corporation, whether as principal or agent, employer or employee, who violates any of the provisions of this act shall be guilty of a misdemeanor, and each day that conditions or actions, in violation of this act, shall continue, shall be deemed to be a separate and distinct offense, and for each offense, upon conviction, he shall be punished by a fine of not less than twenty-five dollars, nor more than five hundred dollars, or shall be imprisoned in the county jail for a term not exceeding six months, or by both such fine and imprisonment. *Id.* Sec. 11.

Relating to weights and weighers for warehousemen and wharfingers, and matters connected therewith:—All persons now engaged in or who may hereafter engage in a general warehouse, wharfinger or storage business for the storage of grain or other commodities, which in the course of such business are weighed, shall before they engage in such business or within sixty days after the appointment of an inspector of weights as provided in section four of this act, designate in writing a person or persons as weigher or weighers for such business at the place thereof, and the person or persons so designated shall thereupon, and before they shall do any weighing for such business subscribe, before an officer authorized to administer oaths, the following oath, to wit:

"(I or we) designated as (weigher or weighers) will correctly weigh all grain or other commodities brought to (here designating the business and place of business) for storage or weighing, or which may be taken out from the same, and in all

cases render to the person bringing or receiving the same, as the case may be, upon demand, a full, true and correct account of the weight thereof." Gen'l Laws Calif., Henning, 1905, pp. 1474-1475, Sec. 1.

All persons engaged in the business in the foregoing section mentioned shall keep for and use in such business no other than true and correct scales and weights.

Said designation and said oath shall thereupon and within the time aforesaid, be recorded in the office of the recorder of the county in which such business is to be or is being carried on.

No person, excepting the person or persons thus designated and subscribing and recording such oath shall do any of the weighing of such business. *Id.* Sec. 2.

Every person engaged in the business in said section one mentioned, shall keep and use therein none but true weights, and scales; said weights must conform to the United States standard of weights. *Id.* Sec. 3.

The board of supervisors of the respective counties of the state of California, hereby are authorized to appoint for their respective counties an inspector of weights and measures, who shall hold office at the pleasure of said board and receive such compensation as each board may allow, and whose duty it shall be from time to time to test and examine all scales and weights kept or used in the business in the foregoing sections mentioned, and report all violations of this act to the district attorney of such county, whose duty it shall be to prosecute all violations hereof. *Id.* Sec. 4.

Every violation of this act shall be and is punishable as a misdemeanor. *Id.* Sec. 5.

Besides the prosecution of the criminal actions herein provided for, every person defrauded by false or incorrect weighing shall be entitled to recover from the person owning or conducting such business as in the foregoing sections mentioned, in any court of competent jurisdiction, three times the amount of such shortage in weight of the grain or other commodity so delivered or taken out by him. *Id.* Sec. 6.

"Cold storage," etc., defined—"Articles of food"—Storer":—The term "cold storage" as used in this act shall be construed to mean a place artificially cooled to a temperature of forty degrees Fahrenheit or below but shall not include such a place in a private home. The term "cold stored" as used in this act shall be

construed to mean the keeping of "articles of food," excepting eggs and butter, in "cold storage" for a period exceeding thirty days; *provided, however,* that when the term "cold storage" is used in connection with eggs and butter, it shall mean the keeping of these "articles of food" in "cold storage" for any length of time whatever. The term "articles of food" as used in this act shall be construed to mean and include fresh meat, and fresh meat products (except in process of manufacture), fresh fruit and vegetables, fish, shellfish, game, poultry, eggs, butter and cheese. The term "storer" as used in this act shall be construed to mean the person or persons who offer articles of food for cold storage.

Act approved June 13, 1913, in effect August 10, 1913. Statutes of California 1913, Chapter 360, page 769, Sec. 1.

Application to operate cold storage plant—License fee:—Any person, firm or corporation desiring to operate a public cold storage or refrigerating warehouse, shall make application in writing to the state board of health for that purpose, stating the location, of its plant or plants. On receipt of the application the state board of health shall cause an examination to be made into the sanitary condition of said plant or plants and if found to be in a sanitary condition and otherwise properly equipped for the business of cold storage, the state board of health shall cause a license to be issued authorizing the applicant to operate a cold storage or refrigerating warehouse for and during a period of one year. The license shall be issued upon payment by the applicant of a license fee of fifty dollars to the state board of health. The secretary of the state board of health shall keep a full and correct account of all fees received under the provisions of this act, and shall, at least once each month, deposit all such fees collected with the state treasurer, and make a detailed report covering same to the state controller, and such moneys shall be credited to the traveling and contingent fund of the state board of health, to be used exclusively for the purpose of this act. *Id.* Section 2.

Use of unsanitary places for cold storage prohibited:—In the event that any place or places, or any part thereof, covered by a license, under the provision of this act shall at any time be deemed by the state board of health to be in an unsanitary condition, it shall be the duty of the state board of health to notify

licensee of such condition and upon the failure of the licensee to put said specified place or places, or the specified part thereof, in a sanitary condition within a designated time it shall be the duty of the state board of health to prohibit the use under its license (of) such specified place or places, or part thereof, as it deems in an unsanitary condition until such time as it may be put in a sanitary condition. *Id.* Section 3.

Record of receipts and withdrawal—Quarterly reports:—It shall be the duty of any person, firm or corporation, licensed to operate a cold storage or refrigeration warehouse to keep an accurate record of the receipts and the withdrawals of the articles of food, and the state board of health shall have free access to these records at any time. Every such person, firm or corporation, shall, furthermore, submit a quarterly report to the state board of health, setting forth in itemized particulars quantity of food products held in cold storage. Such quarterly reports shall be filed on or before the twenty-fifth day of January, April, July and October of each year, and the reports so rendered shall show the conditions existing on the first day of the month in which the report is filed. The state board of health shall have the authority to require such reports to be made at more frequent intervals than the times herein specified, if in the judgment of the state board of health more frequent reports shall be needed in the interest of a proper enforcement of this act, or for other reasons affecting the public welfare. *Id.* Sec. 4.

Diseased articles not to be stored—Articles for other than human consumption to be marked:—No storer shall place in cold storage any article of food intended for human consumption, if diseased, tainted or deteriorated so as to injure its keeping qualities, or if not slaughtered, handled and prepared for storage in accordance with the pure food and sanitary food laws and such rules and regulations as may be prescribed by the state board of health for the sanitary preparation of food products for cold storage, under the authority hereinafter conferred. Any article of food if intended for use other than human consumption before being cold stored shall be marked by the owner in accordance with forms prescribed by the state board of health, under authority hereinafter conferred, in such a way as to plainly indicate the fact that such articles are not to be sold for human food. *Id.* Sec. 5.

Board of health to supervise and inspect cold storage plants:—It shall be the duty of the state board of health to inspect and supervise all cold storage or refrigerating warehouses in this state, and to make such inspection of the entry of articles of food therein as the state board of health may deem necessary to secure proper enforcement of this act. The members of the state board of health or its duly authorized agents, inspectors or employees, shall be permitted access to such establishments and all parts thereof at all reasonable times for purposes of inspection and enforcement of the provisions of this act. The state board of health may also appoint and designate, at such salary or salaries as it may designate, such person or persons as it deems qualified to make the inspections herein required. *Id.* Sec. 6.

Dates of receipt and withdrawal marked on articles:—All articles of food when deposited in cold storage shall be marked plainly on or in connection with the containers in which they are packed on the individual article with the date of receipt, and when removed from cold storage shall be marked with the date of withdrawal, in accordance with such forms as may be prescribed by the state board of health, under the authority hereinafter conferred. *Id.* Sec. 7.

Maximum period twelve months—Extension of period:—No person, firm or corporation as owners or having control shall keep in cold storage any article of food for a longer period than twelve calendar months, except with the consent of the state board of health, as hereinafter provided. The state board of health, shall, upon application, grant permission to extend the period of storage beyond twelve months for particular consignment of goods, if the goods in question are found, upon examination, to be in proper condition for further storage at the end of twelve months. The length of time for which further storage is allowed shall be specified in the order granting the permission. A report on each case in which such extension of storage may be permitted, including information relating to the reason for the action of the state board of health, the kind and the amount of goods for which the storage period was extended, and the length of time for which the continuance was granted, shall be included in the annual report of the state board of health. *Id.* Sec. 8.

Notice: "These are cold storage goods." It shall be unlawful to sell, or to offer or expose for sale, uncooked articles of food which have been cold stored without notifying persons purchasing, or intending to purchase, the same that they have been kept in cold storage by the display, in a conspicuous place and upon the articles of food, of a sign marked, "These are cold stored goods," in type at least two inches high; and it shall be unlawful to represent or advertise as fresh goods articles of food which have been placed in cold storage. *Id.* Sec. 9.

Unlawful to return cold-stored articles to cold storage:— It shall be unlawful to return to cold storage any article of food that has once been released from such storage and placed on the market for sale to consumers, but nothing in this section shall be construed to prevent the transfer of goods from one cold storage or refrigerating warehouse to another; provided, that such transfer is not made for the purpose of evading any provision of this act. *Id.* Sec. 10.

Rules and regulations:—The state board of health may make rules and regulations to secure a proper enforcement of the provisions of this act, including rules and regulations with respect to the sanitary preparation of articles of food for cold storage, the use of marks, tags, or labels, and the display of signs, and the violation of such rules shall be punished on conviction, as provided in section 12 of this act. *Id.* Sec. 11.

Penalty:—Any person, firm or corporation violating any of the provisions of this act shall upon conviction be punished for the first offense by a fine not exceeding five hundred dollars, and for the second offense by a fine not exceeding one thousand dollars, or by imprisonment for not more than ninety days, or by both such fine and imprisonment. *Id.* Sec. 12.

DECISIONS AFFECTING WAREHOUSEMEN

A.

Bailment—Requisites of a prima facie case—Burden of proof, shifting thereof:—Proof of the deposit and failure to redeliver in accordance with the terms of the contract makes a *prima facie* case against the warehouseman and the burden is upon him to excuse the failure to redeliver. But where the warehouseman

shows the return of the goods stored and further that the contents of the packages have been lost by leakage or other inherent cause, the burden shifts to the plaintiff to prove affirmatively that the leakage was caused by the fault of the warehouseman. *Taussig et al.* v. *Bode & Haslett*, 134 Cal. 260.

Same—Bailee protected by delivery in good faith to bailor:—Where a warehouseman, after having goods in his possession, returns the same to his bailor without notice that a third party claims title thereto, such delivery made in good faith is a good defense in an action against a warehouseman. *Steele* v. *Marsicano*, 102 Cal. 666.

Same—Insufficient evidence in action of detinue:—In an action of detinue against a warehouseman for property stored with him, it was no defense for him to show that he had wrongfully disposed of the property in an attempt thereby to defeat the action of detinue which is for the recovery of the specific article. The defendant was not allowed to set up his own wrong to defeat the action; therefore the warehouseman was held liable for the value of the property. *Faulkner* v. *First National Bank*, 130 Cal. 258.

B.

Absolute contract to return property—Exception—Damage by the elements, construed to mean act of God:—Where a warehouse receipt states that the goods are to be returned to the bailor, the one exception stated therein being "damage by elements" the warehouseman is bound to deliver such goods upon presentation of receipt; the only valid excuse which he can make is for loss or damage resulting from act of God. *Pope* v. *Farmers' Union and Milling Co.*, 130 Cal. 139.

Liability of warehousemen—Valid stipulation limiting same—Public policy:—Agreement between a warehouseman and bailor under which the former claims exemption from liability from loss by fire, the elements, shrinkage, leakage, or natural decay, under a notice printed upon the margin of the warehouse receipt, in which it is stated that loss or damage from the above causes is at the owner's risk, it was held that the warehouseman was so exempt from liability and that there is no infringement of public policy by a stipulation to the above effect. *Taussig et al.* v. *Bode & Haslett*, 134 Cal. 260.

Same—Stipulation against liability for loss by fire does not exempt warehouseman from exercise of ordinary care—Burden of proof:—In a receipt issued by a warehouseman it was stated "No liability for fire, etc." In an action for conversion of the goods represented by such receipt, the plaintiffs established the facts set forth in their petition and it was held the burden was then cast upon defendant to establish affirmatively the grounds of his defense and that a stipulation in a warehouse receipt that the warehouseman was not to be held liable for a loss by fire did not relieve him of the duty of exercising ordinary care in the safe-keeping of the goods. *Dieterle* v. *Bekin,* 143 Cal. 683.

Bill of sale—Delivery at warehouse to be weighed, effect on title—Attachment:—The owner of stored wheat sold the same and certain other wheat which was not in the warehouse but, under the terms of the bill of sale, was to be delivered at the warehouse for purpose of being weighed and the warehouseman was thereupon to show a certificate as to the correctness of its weight, such certificate to be in the name of the purchaser. When the goods had been so delivered but before the certificate had been issued to the buyer, it was attempted to attach the goods. It was *held* that the delivery to the warehouseman constituted passage of title to the goods and that the attachment had been improperly made. *Greenbaum* v. *Martinez,* 86 Cal. 459.

Sale of wheat by warehouseman who is also a dealer therein—Necessary evidence:—Where a person is acting as a warehouseman for the storage of wheat and is also engaged in the business of buying and selling wheat, a sale by him to a purchaser will not be set aside in the absence of conclusive evidence that the wheat so sold belonged to the plaintiff and that it was stored with such warehouseman and then sold by him. *Davis* v. *McNear,* 101 Cal. 606.

Sale of goods while stored—Order upon warehouseman—Bona fide purchaser protected:—A sells to B part of the goods which he has stored with M, a warehouseman, and delivers to M an order authorizing B to remove the goods sold to him. B pays A a part of the purchase price thereof and gives him a note for the balance, in which it is stated that A shall have a lien on such goods as additional security for the payment of the note; B then sells the goods to a *bona fide* purchaser, C. *Held,* C takes clear of any lien of A upon the goods for the balance remaining due

on the purchase price thereof. *Goldstone* v. *Merchants Ice and Cold Storage Co.*, 123 Cal. 625.

Conversion—Defined to be a tort:—In order to establish conversion a tortious act must be shown. *Steele* v. *Marsicano*, 102 Cal. 666.

Same—Intermeddling in ignorance of owner's claim not conversion:—Where one intermeddling with another's property does not assert title to it, this act does not constitute a conversion. There must be some act implying the exercise or assertion of title or dominion over the goods or some act inconsistent with the plaintiff's right of ownership or in repudiation of such right. *Id.*

Same—Effect of refusal to deliver:—A demand of the property and a refusal to redeliver it do not of themselves constitute a conversion. They are merely evidence from which a conversion may be established and as evidence may be repelled by proof of inability to comply. The plaintiff must also show the ability of the defendant to comply with the demand at the time it was made. *Id.*

Same—Same—Held to be conversion:—Where a plaintiff avers that demands were made upon defendant for the redelivery of goods and that defendant persistently refused to so deliver them, it was *held* that this constituted a sufficient averment of conversion. *Faulkner* v. *First National Bank*, 130 Cal. 258.

Same—Liability for:—Where a warehouseman, knowing of a claim of title of a third person to wheat stored in his warehouse in the name of such third person's broker, the delivery of the wheat, without notice to such third person, to an assignee of the broker is conversion thereof, for which the warehouseman is liable. *Hanna* v. *Flint et al.*, 14 Cal. 74; *Wilson* v. *Southern Pacific R. R. Co.*, 62 Cal. 164.

Same—Same—Goods still in the warehouse—False statement as to sale for storage charges—Return of warehouse receipt not demanded:—Where it appeared that the defendant, a warehouseman, had refused to deliver property of the plaintiff which he held on storage, stating that the same had been sold in order to pay charges and at the same time demanded a cash amount, for which he agreed to deliver the goods, it was *held*, that such statements amounted to a conversion of the property, for which the warehouseman was liable, and he could not set up a defense that

he justified his refusal to deliver the goods on the ground that the receipt therefor had not been tendered to him, it appearing from evidence that he had made no demand for the receipt. *Briggs* v. *Haycock*, 63 Cal. 343.

Same—When mortgagee can maintain action:—Where a warehouseman delivered harvested crops to a vendee of the assignee in insolvency of the mortgagor of the crops, the mortgagee may maintain an action for conversion against the warehouseman for such wrongful delivery. *Compodonico* v. *Oregon Improvement Co.*, 87 Cal. 566.

Same—Variance as to date—Effect:—Where in a complaint in an action for conversion it is alleged that the conversion was done by the defendant on a particular day and by the proof at the trial it is shown that the conversion took place upon another day, subsequent thereto, but prior to the commencement of the action, such variance is not fatal. *Bancroft* v. *Haslett et al.*, 106 Cal. 151.

Warehouse, real property:—In the absence of evidence to show that a warehouse, 100 feet by 40 feet (100x40), was not attached to the ground, it will be presumed that it was so attached and will accordingly be treated as real estate. *Santa Ana* v. *Pritchard et al.*, 126 Cal. 600.

Allegations as to ownership of warehouse receipt—Presumptions therefrom—General demurrer:—Where a complainant in an action against warehousemen alleges that the defendants were, at the times named therein, engaged in the business of warehousemen and as such doing a general storage business and that prior to a certain date plaintiff delivered to the defendants for storage and stored with them certain quantities of barley and received therefor a warehouse receipt, copy of which is set forth in the complaint, and further alleges that the plaintiff has at all times since the delivery of such property to the warehousemen, and is at the time of bringing the action, the sole owner and holder of said receipt and that on a certain date plaintiff presented receipt to defendants and thereupon demanded delivery of the barley, the defendants refusing to comply with said demand; it was *held*, upon general demurrer, which set forth that it was nowhere alleged in the complaint that at the time of the commencement of the action plaintiff was the owner and entitled

to the possession of the property claimed, that the presentation of the warehouse receipt in exactly the same condition in which it was received by complainant was sufficient allegation of the ownership of the property. The court, however, intimated that a special demurrer might have been sustained. *Visher* v. *Smith*, 91 Cal. 260.

Statements made by a warehouseman—When considered part of res gestae:—When it appears that a warehouseman made statements, at the time of the removal of wheat from his warehouse, pertaining to the ownership thereof, such statements will be received in evidence as part of the *res gestae*. *Garoutte* v. *Williamson*, 108 Cal. 135.

Claim and delivery—Auxiliary action—Pleading:—In California there is no form of action which is known technically as "claim and delivery." The sections in the Code, under this title, provide an auxiliary remedy for the recovery of personal property. In a case where an auxiliary remedy is not invoked the general rules of pleading apply. *Faulkner* v. *First National Bank*, 130 Cal. 258.

C.

Safe deposit—General principles:—Where one rents a safe deposit box from a bank the bank becomes his bailee for hire and is bound to exercise ordinary care in the preservation and safekeeping thereof, in the absence of a special agreement to the contrary. *Cussen* v. *Southern California Savings Bank*, 133 Cal. 534.

Same—Modified by agreement—Limitations of such agreement:—Where the lessor of a safe deposit box and the lessee thereof agree that the former "shall use diligence that no unauthorized person shall be admitted to any rented safe, and beyond this the lessor shall not be responsible for the contents of any safe rented it." Such agreement will not be interpreted to mean that the lessor is thereby relieved from liability to use proper care in the selection of employees to guard such safes, nor is such contract to be in any manner construed as a general waiver by the lessee of the lessor's obligation of the bailee for hire. *Id.*

Same—Duplicate keys—Retention of one by bailee, not proper care—Prima facie case:—Held, jury was fully justified in declaring defendant wanting in the exercise of proper care when it

failed to deliver to plaintiff both keys of a safe deposit box which it rented to him, thus leaving outstanding, in the hands of some one, a key to the box. As a further lack of proper care, it was shown that the room containing the boxes was in charge of a young man of about the age of seventeen years, who had been in the employ of the defendant for but three months. A *prima facie* case is made out by showing a deposit in the box and subsequent loss. *Id.*

Same—Same—Section 1840, *Civil Code, not applicable:*—In such a case as the above, the defendant cannot find relief under section 1840 of the Code, which declares that the liability of a depositary for negligence cannot exceed the amount which he is informed, by the depositor, or has reason to suppose, the articles deposited to be worth. The very manner of conducting the business of renting safe deposit boxes contemplates that the bailee shall not know the value of the thing deposited. *Id.*

F.

Common carrier—Liability as warehouseman:—A common carrier becomes liable as a warehouseman only after the transit is terminated and the consignee has been notified of the arrival of the goods. *Wilson* v. *California Central R. R. Co.*, 94 Cal. 166; *Jackson* v. *Sacramento Valley R. R. Co.*, 23 Cal. 268; *Hoyt* v. *Railroad*, 68 Cal. 644.

H.

Action for storage charges—When earned—Entire contract:—Where a warehouseman contracts to store hay from October 17th to the 1st of the following June, and during such interval the warehouse and contents are destroyed by fire, he cannot maintain an action for the recovery of his charges. The contract is an entire one and his charges are not due until he has complied with the terms thereof. In the absence of a stipulation in such contract that a proportional amount of the storage charges should be earned as the time expires, there can be no recovery unless contract has been fully carried out. *Cunningham* v. *Kenney*, 105 Cal. 118.

Improper sale for storage charges:—In an action brought by bailor against a warehouseman for conversion of a piano, the defendant alleged that the piano was sold for lawful storage

charges and that payment of such charges had been refused by the plaintiff when demanded of him and that there is now still due the defendant money for the storage of the piano. The findings showed that the defendant did not come into lawful possession of the piano, that plaintiff had demanded its return, which was refused, and that it had been taken from the plaintiff against his will. It was *held* on the above findings, that the plaintiff was entitled to damages and a request for further evidence was properly denied. *Bancroft Co.* v. *Haslett,* 106 Cal. 151.

Sale for storage charges—Liable for conversion unless proper notice is given—Ignorance of the owner's actual address:—Plaintiff brought suit against defendant, a warehouseman, for conversion of household goods stored with him; it appeared on the trial that the goods had been sold for storage charges but that the owner had not received actual notice of such sale, as is required. It further appeared that the warehouseman had failed to note the address of the plaintiff at the time goods were stored. It was *held*, that such sale, in the absence of the actual notice, as required, constituted a conversion for which the defendant was liable and that the fact that the defendant had failed to note the place of residence of the plaintiff constituted no excuse for the absence of actual notice. *Stewart* v. *Naud*, 125 Cal. 596.

Same—Facts establishing contract of storage—Improper sale—Code provisions as to sale after sixty days applicable only to storage contracts implied by law:—Plaintiff shipped package addressed to himself, which upon arrival was stored by the railroad company with the defendant as warehouseman. About four months later, plaintiff called at defendant's warehouse and was advised as to the accrued charges and the rate per month which at plaintiff's request was written on a card by a representative of defendant and handed to plaintiff. No demand was then made for the accrued or other charges, and plaintiff was informed defendant would keep the goods "as long as you want." Plaintiff stated he was starting upon a long trip, that he would communicate with defendant upon his return and that the package contained valuable articles. Seventeen months later, on plaintiff's return from the trip, he wrote to defendant asking for storage bill. To this he received a postal in reply, saying the goods had been sold over a year prior thereto for storage

charges. It was held that, although under sections 3152 and 3153 of the Political Code, goods might be sold for storage charges after the expiration of sixty days, such provisions related only to contracts implied by law and that under the facts shown in this case an express contract of storage was established; that defendant had not waited a reasonable time before selling the goods and hence was liable therefor. *Shedoudy* v. *Spreckles Bros. Co.*, 9 Calif. App. 398.

Same—When sheriff bailor—Liability for conversion if he allows sale for storage charges—Order of court necessary:—If a sheriff who has attached property, and in order to protect himself, stores the same, he is personally liable to the owner thereof, upon his official bond, if he allows such property to be sold for unpaid storage charges.

It was the duty of the warehouseman to procure an order of the court authorizing such sale; in such a case, the action of the warehouseman is that of his principal therein, and in spite of the fact that he held a statutory lien on such property for the storage charges there should have been no sale thereof in the absence of an order from the court. *Aigeltinger* v. *Whelan,* 133 Cal. 110.

Lien for charges—What constitutes a waiver thereof:—If a warehouseman states to an officer of the court, who is about to take possession of property stored with him, that there are no charges due upon such property, this constitutes a waiver of his lien for all of such charges as may have then existed. *Blackman* v. *Pierce,* 23 Cal. 508.

"All claims and liens," held to include cartage charges:—Under the terms of a contract between a vendor and vendee of a warehouse, the vendee agreed to collect "all claims and liens" that the vendor then had against the property stored in his warehouse. This was *held* to include all charges made by the vendor for the cartage of the goods to his warehouse. *Hurlford* v. *Neale,* 107 Cal. 610.

I.

Segregation — What constitutes — Effect of — Mortgage of stored goods:—Where the mortgagee of one thousand sacks of flour stored with a warehouseman, comes to said warehouseman and exhibits to him the warehouse receipt for such flour and

requests that one thousand or more sacks, of such flour be separated from the entire amount of flour stored by the mortgagor, and this is accordingly done; it was *held* that this constituted a good segregation, and thereupon the warehouseman became the agent of the mortgagee. *Squires* v. *Payne*, 6 Cal. 654; *Cartwright* v. *Phoenix*, 7 Cal. 281.

Same—When necessary:—When a vendor only sells part of the goods on storage, those sold, if stored together and of the same mark, must be separated from the larger mass in order to change the possession; but where *all* the goods of the vender in the hands of a third party are sold, the change of possession is completed by the delivery of the order, taking a new receipt and entry of the transaction on the books of the warehouseman. *Horr* v. *Barker*, 8 Cal. 603; *S. C.*, 11 Cal. 393; *S. C.*, 6 Cal. 489, cited in *Ghirardelli* v. *McDermott*, 22 Cal. 539, and *Davis* v. *Russell*, 52 Cal. 611.

Same—Same—Transfer on books:—A had a large quantity of flour stored in the warehouse of B. He sold a portion of it to C, and gave an order therefor on B, who accepted the same and gave C in exchange a receipt for the flour purchased by him, and transferred it on his books to the account of C. There was no separation of specific portion from the flour of A as the property of C and the whole was subsequently seized in an action against A. *Held*, that the sheriff was not liable to C, in the absence of segregation of the flour, but that B was estopped by his receipt from denying liability. *Adams v. Gorham*, 6 Cal. 69.

Same—Want of—Estoppel:—Warehousemen who give their receipt for goods on storge, are estopped from setting up a want of segregation of the goods receipted for from other goods, in an action against them by the holder of the receipt, for a conversion of the goods by a seizure in an action against a vendor of the plaintiff. And this, although the warehousemen are the attaching creditors, and although the sheriff making the seizure was not liable, by reason of there being no segregation. *Goodwin* v. *Scannel et al.*, 6 Cal. 541.

Misdelivery—Carrier acting as warehouseman:—A carrier is liable if it delivers goods to a person who presents a bill of lading therefor which is unindorsed, and such person not being

identified to such a carrier as one having an interest in such goods. *Cavallarp* v. *Texas and Pacific Railway Co.*, 110 Cal. 348.

K.

Attachment of goods in warehouse—Officer's possession by aid of keeper—Evidence:—An attachment of stored goods is properly made by an officer if he takes actual possession thereof and retains such possession by the assistance of a keeper whom he leaves in personal charge thereof. He may show these facts by parol evidence. *Sinsheimer* v. *Whitely*, 111 Cal. 378.

L.

Trover—Transfer of warehouse receipt—Conversion—Burden of proof:—Plaintiff stored wheat with a warehouseman and received warehouse receipt therefor; there was no other wheat stored in the warehouse at the time and subsequently the warehouseman issued a receipt to another, for certain quantities of wheat, less than the amount stored therein by the plaintiff. Such other person negotiated the receipt to the defendant, who obtained possession of the wheat it represented. It further appeared that plaintiff had pledged his receipt as collateral security for the payment of the loan, but the evidence as to the existence of such loan, date thereof, and its payment was not conclusive. The court instructed the jury that, if they found that the plaintiff was the owner of the receipt at the time that the defendant obtained possession of the wheat, they should find for the plaintiff, and the jury so found. Upon appeal, this instruction was *held* correct. *Garoutee v. Williamson*, 108 Cal. 135.

N.

Loss by fire—Bailor not affected by contract between warehouseman and railroad regarding destruction of warehouse by fire—Negligence:—A warehouseman constructed a warehouse upon land belonging to a railroad and adjacent to its tracks; in the lease between them it was provided that the railroad should not be liable for any loss or damage done to the warehouse, or its contents, as a result of fire communicated by its engines. In a case for loss from such cause it was *held*, that a person storing his goods in such warehouse could recover from the railroad on showing that the fire was a result of its negligence. *King* v. *Southern Pacific Co.*, 109 Cal. 96.

Same—Of incendiary origin—Never "act of God"—Negligence:—Where wheat was destroyed by fire in a warehouse, such fire being of incendiary origin, the warehouseman is liable therefor and cannot set up a defense that the fire occurred without his fault. Negligence does not enter into the question in such cases and its absence will not exonerate the warehouseman. *Pope* v. *Farmers' Union and Milling Co.*, 130 Cal. 139.

Same—Burden of proof on plaintiff—Negligence:—Where it is shown that the warehouse, containing goods for which an action was brought, was destroyed by fire, the burden of proof is on the plaintiff to show that such fire was caused by the negligence of the warehouseman. *Wilson* v. *Southern Pacific R. R. Co.*, 62 Cal. 164.

Action for recovery of goods embezzled from warehouse—Warehouseman may bring one action for the recovery of property belonging to several bailors:—Where goods belonging to different bailors have been stolen from a warehouse by an employee therein and are found in the hands of a third person, the warehouseman may sue for the recovery of all goods so found, and objection made by defendant that separate actions should be brought in the case of each of the warehouseman's bailors is not well taken. *Bode* v. *Lee*, 102 Cal. 583.

Same—Same—Burden of proof:—In the above case, if the defendants are unable to prove that they came into possession of the property in ignorance of the fact that it had been embezzled from the plaintiff, the burden of proof will be upon them to prove that the identical goods found in their possession are not the missing portion of the goods which the plaintiff still retains in his warehouse. *Id.*

Negligence—Must be shown in order to hold warehouseman liable:—A warehouseman is only liable for damages caused to property in his custody which arise from his negligence. *Reeder* v. *Wells Fargo & Co.*, 113 Pac. Rep. 342.

Same—When failure to inspect stored goods is not ignorance—Leakage—Stipulation in warehouse receipt—Instructions—Reversible error:—Where a warehouseman receives spirits for storage and the receipt given therefor states that the warehouseman is not responsible for loss resulting from leakage, and other specified causes, this is *held* to be a notice to the bailor, and the mere

failure of the warehouseman to inspect the barrels containing such spirits cannot be held to constitute negligence on his part. Where, in a trial of such a case, the judge instructs the jury that if they find that the leakage was due to the original negligence of the plaintiffs in storing these spirits in leaky casks the defendant will, nevertheless, be liable for the loss, if by the exercise of ordinary care, he could have discovered and cured the defect or prevented the loss; such instruction *held* to be reversible error. *Taussig et al.* v. *Bode & Haslett,* 134 Cal. 260.

Same—Burden of proof—When defendant must show loss not caused by his negligence:—Plaintiffs established the delivery of the goods to the defendant warehouseman, his refusal to return and the other matters alleged in their complaint. Upon the evidence the court found that the warehouse had been destroyed by fire and that the defendant had been grossly negligent in keeping and storing the goods. The burden was cast upon defendant to show the loss did not arise from such negligence but resulted from some cause with which he was entirely disconnected. Plaintiffs appealed from a judgment for the defendant and on such appeal the case was reversed with directions to the trial court to make findings of fact in respect of defendant's negligence. *Dieterle* v. *Bekin,* 143 Cal. 683.

Same—On part of depositor proximate cause of loss—Warehouseman not liable—Recovery for injury to warehouse:—Defendant, the owner of a warehouse built out over the water in the bay of San Francisco, was sued by the depositor of hay which was stored there and was lost as a result of the warehouse being demolished during a storm. It was shown that plaintiff had placed in the warehouse, contrary to an agreement with the defendant, an excess of 111 bales of hay and that plaintiff had left open the large doors of the warehouse, thus enabling the high wind to lift the roof. Plaintiff alleged the supports of the warehouse had rotted and that this caused the destruction. Defendant, by cross complaint, sought to recover the storage charges and damages for the destruction of the warehouse. The jury returned a verdict for defendant, but for a sum smaller than the storage charges. Plaintiff appealed and it was held the verdict of the jury was justified by the evidence and that as to the storage charges, plaintiff could not be heard to complain that

the verdict for defendant was too small. *Smith Co.* v. *Suttich,* 10 Calif. App. 540.

Q.

Warehouse receipt—Definition:—A warehouse receipt has been defined to be a written contract between the owner of the goods and the warehouseman, the latter to store the goods and the former to pay for that service. *Sinsheimer* v. *Whitely,* 111 Cal. 378; (*Hale* v. *Milwaukee Dock Co.,* 29 Wis. 488).

Same—Issued in the name of one not the depositor—Effect:—Where A deposits fruit in a warehouse and takes a receipt therefor in the name of B, the reason for his so doing being unexplained to the warehouseman, and A borrows money from the warehouseman with such receipt as collateral security, and afterwards obtains a new receipt issued in his own name, A will be regarded as the owner of the goods, and an action by B against the assignee of the warehouseman cannot be maintained, it not appearing that any privity had existed between them. *Lowrie et al.* v. *Salz et al.,* 75 Cal. 349.

Same—Who may issue:—It is only persons who pursue the calling of warehousemen—that is, receive and store goods in warehouses as a business for profit—who have the power to issue a technical warehouse receipt, the transfer of which is a good delivery of the goods represented by it. *Sinsheimer* v. *Whitely,* 111 Cal. 378.

Same—Issued in name of one not owner—No higher evidence of ownership, except against warehouseman, than physical possession of goods:—Plaintiff, the manufacturer of merchandise in Ohio, shipped a number of cases of goods to San Francisco, consigned to itself with directions on the bill of lading to notify J. R. Moler upon their arrival. J. R. Moler & Co. was a firm doing business in Denver, who had an agent in San Francisco by the name of Ingold. When the goods arrived, Ingold stored them in the name of plaintiff, care of himself. No warehouse receipt was then issued. Later most of the goods were changed to the account of J. R. Moler & Co., care of Ingold, and subsequently they were transferred to another warehouse and receipt issued in Ingold's name. This receipt Ingold pledged with the defendant bank and obtained a loan thereon. Part of this loan he paid and when the balance became due, he had disappeared. The defendant upon this default sold the goods and for the

proceeds of such sale this action was brought by the manufacturer and owner of the goods. It was held, the possession of a warehouse receipt, except as against the warehouseman, is no higher evidence of ownership than the physical possession of the goods, and that under Section 2991, Civil Code, defendant must show that Ingold had been "allowed" by plaintiff to have possession of the goods. The judgment against the defendant was according affirmed. *Akron Cereal Co.* v. *First National Bank,* 3 Cal. App. 198.

Same—Estoppel by—Ratification of receipt issued by warehouse corporation by its secretary and manager to himself individually:—It was shown that a corporation had been in the habit of issuing its negotiable warehouse receipts signed only by its secretary and manager, and to him individually for hay stored by him. After the issuance of the receipt upon which the suit was brought, it appeared that the directors had met and approved the financial statement of the company, which statement showed this particular receipt; it also appeared that the purchaser of the receipt had inquired of the company's officers as to the storage charges. The company subsequently refused to deliver the hay represented by the receipt upon the ground that there had already been delivered all the hay to the credit of the secretary and manager. It was held that the company had ratified this receipt and further it was estopped to contradict the receipt as to its possession of the amount of hay represented thereby. *Riley* v. *Loma Vista Ranch Co.,* 1 Cal. App. 488.

Same—Negotiability:—Warehouse receipts are negotiable unless they have the word "Non-negotiable" printed, in red ink, across their face, and when negotiable an indorsement of the receipt operates as a valid transfer. *Cavallaro* v. *Texas and Pacific Railway Co.,* 110 Cal. 348; *Garoutte* v. *Williamson,* 108 Cal. 135; *Bishop* v. *Fulkerth,* 68 Cal. 607; *Davis* v. *Russell et al.,* 52 Cal. 611.

Same—Same—Consideration:—A pre-existing debt constitutes a sufficiently valuable consideration for a transfer of a warehouse receipt. *Davis* v. *Russell et al.,* 52 Cal. 611; *Bishop* v. *Fulkerth,* 68 Cal. 607; *Cavallaro* v. *Texas and P. R. R. Co.,* 110 Cal. 348.

Same—Same—Effect of order:—Under act of 1878 (Statutes, 1878, page 949) a warehouseman is authorized to deliver goods in cases where a negotiable receipt was issued therefor only upon

return and delivery to him of such receipt. In a case where a non-negotiable receipt had been issued the warehouseman can deliver the goods upon a written order of the person who had deposited them. Where a warehouseman receives an order from a bailor directing him to deliver goods standing to his credit, the warehouseman cannot be presumed to have concluded that the receipt issued therefor was a negotiable receipt, but, on the contrary, the inference is that it was non-negotiable. *Goldstone* v. *Merchants' Ice & Cold Storage Co.*, 123 Cal. 625.

Same—Non-negotiable—Transfer—Intention of the parties:—In an action upon a non-negotiable receipt by the transferee it was found by a jury that it was the intention of the parties by such transfer to pass the right to the possession of the goods represented as well as the possession of the receipt and that the receipt was not transferred merely as evidence of good faith in a pending business transaction as contended by defendant. Although the receipt was non-negotiable on its face, nevertheless, sections 1858b and 1858d of the Civil Code are not applicable because the intention of the parties had been conclusively determined by the jury. *Callahan* v. *Marshall*, 126 Pac. 358, 163 Cal. 552.

Same—Assignment of mortgage—Preference under the insolvency act:—The assignment of a warehouse receipt made by the mortgagor to the mortgagee on the day of the filing of the mortgagor's petition of insolvency, was not viewed as a preference under section 55 of the insolvency act, as the value of the property was less than the debt for which it was mortgaged and nothing was withdrawn from the reach of the assignee representing the creditors of the mortgagor. If it be considered that the effect of this was in form a transfer of the legal title to the property described in the receipt it was nevertheless valid as against the assignee. *Campodonico* v. *Oregon Improvement Co.*, 87 Cal. 566.

Same—Delivery when a receipt outstanding—Query:—Where a warehouseman issued a receipt to one S., who had made a loan on the wheat stored, to the owners, E. & H.,—query, whether they could have refused to deliver the wheat to E. & H. while the receipt to S. was outstanding. *Hanna* v. *Flint*, 14 Cal. 74.

Same—Weighing tags held not to constitute warehouse receipt:—The mere transfer of weighing tags upon which it was

stated "Weighed for —— forty (40) sacks beans," cannot be held to constitute warehouse receipts therefor sufficient to pass the title to the property represented. The court further *held*, that there must be something on the face of the instrument to indicate that a contract of storage had been entered into between the parties. Therefore, in such a case, although the owner had pledged such weighing tags as security for a loan, the property represented thereby could be reached by an attaching creditor. *Sinsheimer* v. *Whitely*, 111. Cal 378.

Same—Delivery of order on warehouseman—Effect:—As between parties, the delivery to a purchaser of an order on a warehouseman for the goods was clearly sufficient to pass the title thereto and rendered the purchaser liable for the price thereof. *Ghirardelli* v. *McDermott*, 22 Cal. 539.

Same—Forgery of—Warehouseman protected:—Where one purchases a warehouse receipt, which was in fact a forgery, the same being executed by a former employee of the warehouseman, and the person who negotiated the receipt to the purchaser had knowledge of the fraud, the warehouseman will not be liable on such a receipt. *McNear* v. *Brown & Hershey*, 122 Cal. 621.

Same—Same—What a warehouseman may offer in evidence:—In such a case as above set forth, in an action brought against a warehouseman for the recovery of the value of the wheat represented in the bogus receipt, the warehouseman may show the date on which the clerk, who executed such false receipt, left his employ, and further, that the grain designated in the receipt was not in his warehouse at the time stated therein. *Id.*

R.

Bill of lading—Stating "contents unknown":—A common carrier cannot protect itself by the statement in a bill of lading, "contents unknown" when there was every opportunity to know the same and the cars were plainly marked with statement of the contents in large letters. *Pierce* v. *Southern Pacific Co.*, 120 Cal. 156.

Same—Stipulations requiring true value—Limitation of liability:—A stipulation in a bill of lading to the effect that the carrier would not be liable for a greater sum than fifty dollars, if the package were lost, unless its true value were given, *held* to be valid. This true even though the loss resulted from

the negligence of the carrier. *Michalitschke Brothers* v. *Wells, Fargo & Co.*, 118 Cal. 683; *Hart* v. *Penna R .R. Co.*, 112 U. S. 341.

Same—Effect of transfer—Same as warehouse receipt:—An assignment of a bill of lading passes title to the goods represented thereby. The effect of the assignment of a warehouse receipt does not differ materially from that of the assignment of a bill of lading. *Davis* v. *Russell*, 52 Cal. 611.

T.

Injuries to persons by warehousemen—Visitor injured by heavy bale falling upon him—Negligence:—Where a person came to a warehouse for the purpose of delivering a paper there, as he was in the habit of doing daily, and, while passing through a passageway, through which persons having business at the warehouse were accustomed to pass, was killed by having a large bale of goods thrown upon him by employees of the warehouseman, the throwing of such bales into the passageway, to which the public had access, was *held* to constitute negligence, and the fact that the deceased was unable to escape, after hearing the warning shouts of the employees, was held not to constitute contributory negligence on the part of the deceased. *O'Callaghan* v. *Bode*, 84 Cal. 489.

Goods sold by assistant foreman—Larceny—Embezzlement:—Where an assistant foreman of a warehouse sells property stored therein he is guilty of larceny. The defense that the crime was technical embezzlement will not stand, as embezzlement is a species of larceny. *The People* v. *Perini et al.*, 94 Cal. 573.

CHAPTER VI

COLORADO

LAWS PERTAINING TO WAREHOUSEMEN

The Uniform Warehouse Receipts Act is in force in Colorado, with the exception of the last two sections which are omitted. It was approved April 25, 1911. Sess. Laws 1911, Ch. 226, p. 653, also this volume, p. 1. The sixtieth section of the Act is as follows:

Inconsistent legislation repealed:—Sections 7017, 7018, 7019, 7020, 7021, 7022 and 7023 of the General Statutes of Colorado, 1908, and all acts or parts of acts inconsistent with this act are hereby repealed.

Freight uncalled for thirty days may be stored and retained for charges—Notice in three days:—When any goods, merchandise or other property shall have been received by any railroad or express company, or other common carrier, commission merchants or warehousemen, and shall not be received by the owner, consignee, or other authorized person, until the expiration of thirty days, it shall be lawful for the said carrier, commission merchant, or warehousemen to hold the same, or the same may be restored, with some responsible person, and be retained until the freight and storage, and all just and reasonable charges be paid by the owner or consignee, or by some person for him; Provided, however, That said railroads or express companies or other common carriers, commission merchants, or warehousemen, shall notify the owners or consignees of the receipt of such goods, merchandise, or other property, within three days from the receipt thereof. Rev. Stats. Colorado, 1908, Sec. 6893.

Not called for in ninety days, be sold—Twenty days, publication—Surplus:—If no person having a right thereto call for said goods, merchandise or other property, within ninety days from the receipt thereof, and pay freight and charges thereon, it shall be lawful for such carrier, commission merchant or warehouseman, to sell such goods, merchandise or other

property, or so much thereof, at auction to the highest bidder, as will pay said freight and charges, first having given twenty days' notice of the time and place of sale to the owner, consignee or consignor, if known, and by advertisement in a daily paper, (or if in a weekly paper, four (4) weeks), published where such sale is to take place; and if any surplus be left after paying freight, storage, cost of advertising, and all other just and reasonable charges, the same shall be paid over to the rightful owner of said property at any time thereafter, upon demand being made therefor, within ninety (90) days. *Id.* sec. 6894.

Surplus, when not called for, paid into treasury, subject, etc.:—If the rightful owner or his agent fail to demand such surplus within ninety (90) days of the time of such sale, then said surplus shall be paid into the county treasury, subject to the order of the owner; and if the owner do not demand such money of the county treasurer within one (1) year, then the same shall be forfeited and paid to the general school fund of the county. *Id.* Sec. 6895.

When carrier's liability ceases—Liability of warehousemen:—After the storage of goods, merchandise or property, as herein provided, the responsibility of the carrier shall cease, nor shall the person with whom the same may be stored be liable for any loss or damage on account thereof, unless the same shall result from his negligence or want of proper care. *Id.* Sec. 6896.

Commissionman—Warehouseman—May sell in 90 days—Publication:—When any commission merchant or warehousemen shall receive on consignment, or on storage, produce, merchandise, or other property, and shall make advances thereon, either to the owner, or for freight and charges, and no time be agreed upon for the repayment of the same, it shall be lawful for the person who makes such advances, if the same be not paid to him within ninety (90) days from the date of such advances, to cause the produce, merchandise or property on which the advances were made to be advertised and sold as provided in the second section of this act; and if a time for the repayment of such charges be agreed upon, then such notice of sale may be made immediately upon default of such payment. *Id.* Sec. 6897.

(Section 2 referred to is section 6894.)

Perishable goods—Notice—Sale—Notice to owner—Affidavit—Sale without notice:—In case the goods, merchandise, or other property referred to in the preceding sections, shall consist of articles which will perish, or become greatly damaged by delay in disposing of the same, then it shall be lawful for such carrier, commission merchant or warehouseman, unless the charges on such goods are paid, and they are claimed and taken away, to sell all of the same, either at auction or at private sale, for the best price that may reasonably be obtained therefor, and to dispose of the proceeds of such sale as provided in section two (2) of this act; Provided, always, That before any such sale is made notice shall be given to the owner, or consignee, or the agent of him, of the intent to so sell and dispose of such goods, merchandise or other property, and the time and place of such sale, either by personal notice or by letter addressed and properly mailed to him, which said notice shall be given at least twenty-four (24) hours before said sale, if the consignee, or owner, or agent of him, so notified shall reside at the place where such goods are; but if the person to be so notified of such sale reside at a distance, then the time of such sale shall be so appointed in said notice as to allow him, in addition to the twenty-four (24) hours above mentioned, a reasonable length of time to claim said goods, or to attend such sale; and if, upon reasonable inquiry, the residence of such consignee, owner or agent cannot be learned, then upon the affidavit of such carrier, commission merchant or warehouseman, or some person in his or their behalf, to be filed and preserved by the carrier, commission merchant or warehouseman, and by them to be produced and exhibited to any person claiming an interest in the goods sold, or to be sold, as aforesaid, such goods, merchandise and other property may be sold as aforesaid without notice. *Id.* Sec. 6898.

(Sec. 2 referred to above is section 6894.)

Lien of common carrier on goods and baggage:—Every common carrier of goods or passengers who shall, at the request of the owner of any personal goods, carry, convey or transport the same from one place to another; and any warehouseman or other person who shall safely keep or store any personal property at the request of the owner or person lawfully in possession thereof, shall in like manner have a lien upon all such personal property for his reasonable charges for the transportation, stor-

age or keeping thereof, and for all reasonable and proper advances made thereon by him, in accordance with the usage and custom of common carriers and warehousemen. *Id.* Sec. 4014.

Embezzlement by carriers, warehousemen, etc.:—A carrier, warehouseman, factor, storage, forwarding or commission merchant, or his clerk, agent, or employe, who, with intent to defraud, sells, or in any way disposes of, or applies or converts to his own use, any bill of lading, custom house permit, or warehouse keeper's receipt, entrusted to or possessed by him, or any property entrusted or consigned to him, or the proceeds or profits of any sale of such property, or fail to pay over such proceeds, deducting charges and usual commissions, shall be adjudged to be guilty of embezzlement, and upon conviction thereof, shall be punished as follows: When the value of the property embezzled, as aforesaid, is twenty dollars, or less, then by imprisonment in the county jail for a period not exceeding six months; when the value of the property embezzled, as aforesaid, is over twenty dollars, then by imprisonment in the state penitentiary for a period of not less than one nor more than two years. *Id.* Sec. 1693.

DECISIONS AFFECTING WAREHOUSEMEN

A.

Bailment—Conversion:—Where a bailee pledges property which has been intrusted to him and the pledgee accepts the same in good faith, believing the property to belong to such bailee, the right of the owner therein is not defeated and he may recover the property or its value from the pledgee. The pledging of property by a bailee constitutes conversion thereof. *Gottlieb* v. *Hartman*, 3 Colo. 53.

B.

No title in depositor—Judgment for intervenor:—An action was brought against a warehouseman for the conversion of goods stored with him in which action one B intervened claiming the title to the property. The complaint alleged that the plaintiff had loaned money to the depositor, who had, in turn, assigned the warehouse receipt issued for the goods to the plaintiff. That the plaintiff had paid all the storage charges due the defendant and demanded the goods and had been met with a refusal to de-

liver. The defendant warehouseman answered and denied that the property belonged to the original depositor, alleging that he had stolen the same and that in reality it belonged to one B. The defendant further alleged that he had received the goods in ignorance of the want of title of the depositor to the goods. Plaintiff's replication averred that the defendant was estopped to deny the title of his depositor and that the plaintiff was in ignorance of the matter set forth by the defendant concerning said lack of title. Subsequent to the filing of the foregoing pleading, B intervened and in his petition set forth that the property had been in his possession as sheriff pursuant to an attachment issued in another action and that at the request of the attorney for the plaintiff therein he had appointed the depositor his custodian, who had without knowledge of the intervenor deposited the goods in the warehouse of the defendant. On the above stated facts the jury found for the intervenor, that he was entitled to the possession of the property and assessed its value. On this verdict the court entered judgment in favor of the intervenor and against the *plaintiff* for the sum found by the jury. On appeal it was *held* that the judgment entered by the court against the plaintiff was without warrant from either the petition or verdict; that by the verdict of the jury possession of the property was awarded to the intervenor and the value thereof was assessed, but there was no finding either against the plaintiff or the defendant specially. That the judgment did not follow the verdict and it was against a party who had incurred no liability to the intervenor. Further that as no judgment had been rendered for or against the defendant warehouseman, he was a stranger to the case on appeal. The case was, therefore, reversed and a new trial ordered. *Gottlieb* v. *Barton*, 13 C. A. 147.

Pledge—By way of warehouse receipt—Statutes pertaining to chattel mortgages do not apply:—Where money had been borrowed upon a warehouse receipt as collateral security, it was contended that the statute relating to the recording of chattel mortgages applied. It was *held*, that while the transaction was of the nature and effect of a chattel mortgage instead of a mere pledge, that it could scarcely be claimed that the delivery of the possession required by the statute was intended to alter or enlarge the meaning of the language there used beyond its ascertained legal sense, or to abrogate any of the settled and well

recognized common-law modes of the delivery of personal property. That, therefore, the relation of the parties in respect to their rights to the property is unaffected by the chattel mortgage act. *Spangler* v. *Butterfield*, 6 Colo. 356.

K.

Presentation of receipt waived:—A warehouseman who did not base his refusal to return goods stored with him upon the fact that the warehouse receipt was not presented, and instead stated another and different ground, was, in an action of replevin for the goods, held to have waived his right to demand the receipt before delivering the goods. *Duffy* v. *Wilson*, 98 Pac. 826.

N.

Loss by fire—Storing of powder in a warehouse, negligence—Proximate causes—Questions for the jury:—Where the evidence showed that defendants, who were engaged in the business of warehousemen, had stored a large quantity of powder in the warehouse, along with plaintiff's goods, that a fire ensued and that the persons engaged in suppressing the fire were prevented, by the presence of the powder in the warehouse from removing plaintiff's goods; in such a case, the question whether the presence of the powder was the proximate cause of the loss of the goods is one for the jury. The storing of powder in a warehouse situated in the city, *held* to constitute negligence on the part of the warehouseman. *White* v. *Colorado Central R. R. Co.*, 3 McCrary (U. S. C. C.) 559; writ of error to U. S. Supreme Court dismissed, 101 U. S. 98.

Loss by theft—Breach of agreement to compromise—Action based on agreement to compromise alone:—The defendant warehouseman was sued for a sum of money alleged to be due the plaintiff pursuant to an agreement made between them by which the warehouseman agreed to pay to the plaintiff a certain sum as a compromise of the claim of the plaintiff against the defendant, for goods lost while stored in the warehouse of the latter. It appeared that the defendant had paid part of the sum due under such agreement and had failed to pay the balance. It was contended in behalf of the defendant that he was not originally liable, under the law as a warehouseman, for the loss. It was *held* that the action was not brought upon the original liability

of the defendant but upon the compromise agreement and that, therefore, this contention could not be sustained. *Swen* v. *Green*, 9 Colo. 358.

Q.

Warehouse receipt—Transfer of—Requisites—Consideration:—The assignment and delivery of a warehouse receipt passes the title of the goods represented to the transferee. In order to validly accomplish this result there must be: first, the assignment and delivery of the receipt, the property represented thereby must be in existence and stored at the place designated therein; second, a valid consideration which may consist of a pre-existing debt, or a transfer as collateral security. *Hill* v. *Colo. Nat. Bank*, 2 Colo. App. 324.

Same—Fraudulent transfer, question for jury:—The question whether or not the transfer of a warehouse receipt was procured with fraudulent intent, is one of fact for the determination of the jury. *Marsh* v. *Cramer*, 16 Colo. 331.

Same—As collateral—Purchase price for goods not paid—Pledgee protected:—A warehouseman issued his receipt to the consignee and purchaser of goods and had no notice at the time that the purchase price had not been paid. It appeared that the purchaser had given his note to the vendor as payment for the goods. After the arrival and storage of the goods in the warehouse, the purchaser procured a loan and pledged the receipt as security therefor. Subsequently this loan was paid out of the proceeds of another loan, the warehouse receipt being indorsed to the second lender as security. The warehouseman had been notified of these transactions and had agreed to hold the property in accordance therewith. Default being made in the payment of the note for the purchase price, the vendor brought an action therefor and attached the property stored in the warehouse. The pledgee thereupon brought an action of replevin against the sheriff and obtained a judgment for the possession of the property. It was *held* on appeal that the pledgee was entitled to the goods, that he was a *bona fide* holder and had taken without notice of any claims by the vendor for the purchase price thereof, that the position of the vendor who parted with possession of the goods without taking security therefor was less grounded in equity than that of the pledgee who, in good faith,

had advanced money upon the warehouse receipt as security. *Spangler* v. *Butterfield*, 6 Colo. 356; *First Nat. Bank* v. *Schmidt et al.*, 6 C. A. 216; *Schmidt & Zeigler* v. *First Nat. Bank*, 10 C. A. 261.

Same—Exemptions in:—Plaintiff stored a quantity of apples with defendant warehouseman, the receipt received having endorsed thereon "At owner's risk." The apples were damaged by having become frozen. Held, the negligence of defendant was in the management of the warehouse in not exercising ordinary care to protect the apples against the unusually cold weather, and that the provision in the receipt did not relieve the warehouseman from the duty to exercise ordinary care in the preservation of the goods. Verdict for plaintiff affirmed. *Denver Public Warehouse Co.* v. *Munger*, 20 Colo. App. 56, 60.

R.

Bills of lading—Exemptions in—Assent thereto implied by acceptance:—Where one accepted and acted under the bill of lading, containing exemptions against the liability of the carrier, it was *held* that these actions constituted an implied assent to the terms and conditions therein expressed. *Lindsey* v. *Flebbe et al.*, 5 C. A. 218.

Same—Same—Not valid as against fraud, negligence or misfeasance:—It is well settled in Colorado that a common carrier cannot divest himself of liability either by special contract or notice where damage or loss from his fraud, negligence or misfeasance. *Union Pac. Ry. Co.* v. *Rainey et al.*, 19 Colo. 225; *Transportation Co.* v. *Comforth*, 3 Colo. 280.

CHAPTER VII

CONNECTICUT

LAWS PERTAINING TO WAREHOUSEMEN

The Uniform Warehouse Receipts Act is in force in Connecticut. It was approved July 17, 1907, see Public Acts, 1907, ch. 220, p. 155, also this volume, p. 1.

Establishment—Receipts:—Any person may establish and maintain a public warehouse, and may receive on storage into the same any goods, wares, merchandise, provisions, or other commodity, and shall issue to the person from whom he receives the same warehouse receipts therefore; and he may issue warehouse receipts for any of his own property which is deposited in such warehouse; but no person shall issue any receipt for any such property so received by him on storage, or deposited by him in such warehouse, unless he shall have displayed and shall maintain in a conspicuous manner, on the front of the building where such goods or other commodities are stored, the words "Public Warehouse." General Statutes, 1902, sec. 4919.

Package containing cold storage, preserved, or incubated eggs to be labeled:—Every person, firm or corporation who shall sell or offer for sale any eggs which have been preserved by any artificial process, or which have been kept in storage for more than fifteen days, in any place where the temperature is reduced by means of chemicals or other agents, or which have been incubated for twenty-four hours or more, shall affix to the package or receptacle containing such eggs, and the package or receptable in which they are delivered, conspicuously displayed with such eggs a label or placard bearing in plain letters not less than one inch in height, the words "cold storage eggs," or "preserved eggs," or "incubated eggs," as the case may be. Act approved May 26, 1913, Public Act. Conn. 1913, Chapter 105, page 1697, sec. 1.

Provision for eggs brought into the state:—No eggs shall

be brought into this state that have been held in cold storage, or preserved by any process, or incubated, unless the package containing said eggs shall be marked or labeled in accordance with the provisions of this act. *Id.*, sec. 2.

Penalty:—Any person who shall fail to comply with the provisions of this act, or who shall knowingly misrepresent the condition or quality of any eggs which have been kept in cold storage, preserved, or incubated, shall be fined not more than twenty-five dollars. *Id.*, sec. 3.

Powers of dairy and food commissioner:—The dairy and food commissioner shall have the same powers with respect to the detection and prosecution of any unlawful sales of cold storage, preserved, or incubated eggs under the provisions of this act as are now conferred upon him with reference to the sale of butter, vinegar, or other food products. *Id.*, sec. 4.

DECISIONS AFFECTING WAREHOUSEMEN

A.

Bailment—Bailee may recover full value for loss occasioned by third person—Bailee represents owner:—If goods intrusted to a bailee are lost by the wrongful act of a third person, the latter is liable to him for their full value, unless the owner interposes by a suit for his own protection. Any sum recovered by the bailee, above what is necessary to compensate him for the loss of his possession and special property, he must hold in trust for the owner; and the third person cannot complain that he is made to pay greater damages than the bailee has sustained, because the bailee, for all the purposes of such action, represents the owner and occupies his place. *Gillette* v. *Goodspeed*, 69 Conn. 363; *White* v. *Webb*, 15 Conn. 302.

Same—Breaking open packages, larceny:—If a carrier, or other bailee, opens a package of goods and takes away and disposes of them, or any part of them, to his own use, it is larceny. *State* v. *Fairclough*, 29 Conn. 47.

Bailment and sale distinguished:—The delivery of grain to a mill owner under a contract containing a clause as follows: "And it is further understood that the party of the second part (mill owner) shall be responsible for all grain sold, shall collect all

the bills for the same, and shall sell to whom he sees fit." *Held*, the interpretation of this clause of the contract made it one of bailment and not of sale. That these provisions could not be regarded as surplusage and that they were entirely inconsistent with the contention that the grain became the property of the mill owner under the terms of the contract. *Johnson* v. *Allen*, 70 Conn. 738; *Harris* v. *Coe*, 71 Conn. 157.

B.

Ordinary care—Removal of goods to another place of storage: —A bailee for hire is bound to exercise reasonable and ordinary care in the protection of goods intrusted to him. The removal of such goods to another place where the risk of loss is not increased, but without the consent of the bailor, *held* not to be violative of his duty as to ordinary care. *Bradley* v. *Cunningham*, 61 Conn. 485; *Allen et all.* v. *Somers*, 73 Conn. 355.

Conversion—Allegation and proof of title not necessary:—A bailor may sue his bailee for the latter's conversion of the thing bailed. The present right of possession at the time of conversion is sufficient to support an action of trover. Ownership is unnecessary to be alleged or proved as the bailee is estopped from denying the title of his bailor, no paramount title having intervened. *Barker* v. *Lewis, S. & T. Co.*, 79 Conn. 342, 344.

H.

Action for storage charges—Absence of express agreement as to temperature:—The plaintiff, a warehouseman, brought an action against the defendant for the recovery of storage charges for the storage of boxes of poultry which had been kept in its cold storage rooms. The defendant admitted that the amount of compensation claimed was due, but alleged by way of counterclaim that the plaintiff had not used due care in the preservation of the poultry and that as a result it had been spoiled and was of no value to the defendant. It appeared that there were two kinds of cold storage known in the business, one known simply as "cold storage" and the other as a "freezer" and that the temperature of a "freezer" was ordinarily kept much lower than that of the cold storage rooms; that the temperature of the cold storage rooms was not low enough to preserve poultry for any great period of time and that it was known to the defendant that the plaintiff's warehouse was not a "freezer." The trial

court held that upon the facts found, the plaintiffs had sustained the burden of showing that they had used ordinary care and diligence in the preservation of the poultry and upon appeal it was held that the court did not err in so holding. *Allen et al.* v. *Somers*, 73 Conn. 355.

M.

Conversion—Delivery by bailee of stolen property—Knowledge:—In a case where stolen property was deposited with a bailee and was delivered by such bailee to the agent of the bailor, in the absence of knowledge on the part of the bailee that the goods were stolen, an action for conversion against the warehouseman will not lie. *Hill* v. *Hayes*, 38 Conn. 532.

N.

Cold storage—Degree of cold—Express agreement:—In the absence of an express agreement a warehouseman is only bound to store goods intrusted to him for cold storage in what is commonly known as a cold storage room or warehouse. Where, in an action against a warehouseman for damages resulting from poultry being kept in too high a temperature, it was shown that the nature of the cold storage rooms was known to the owner of the poultry, and, further, that the fact that the warehouseman did not maintain a "freezer" was also known, it was *held* that he was not liable for the resulting loss. *Allen et al.* v. *Somers*, 73 Conn. 355.

Insurance—Duty to notify bailee as to existence of insurance:—The defendant stored a hearse belonging to the plaintiff in his stable and at the time of the contract there was no special agreement made as to where the hearse was to be kept. Subsequently, without the knowledge of the plaintiff, the defendant removed the hearse from his stable to his barn. There was no claim made that the barn was more exposed to fire or that the chances of loss or damages were increased by the removal. It appeared that the plaintiff, without notifying the defendant, had insured the hearse while stored in the stable. Subsequent to its removal to the barn the hearse was destroyed by fire. The policy of insurance became void as a result of the removal of the hearse. It was *held* that the defendant was only bound for reasonable care and that the removal of the hearse from the stable to the barn was not in controvention of the exercise of

such care and that it was the duty of the plaintiff to have notified the defendant of the insurance. *Bradley* v. *Cunningham*, 61 Conn. 485.

Q.

Warehouse receipts—Negotiability—Bona fide holder—No claim for amount due on purchase price nor for government tax—Absence of notice on receipt—Estoppel:—The plaintiff became the *bona fide* holder of a warehouse receipt and brought an action against the defendant warehouseman for the recovery of whiskey represented thereby. It appeared that there was an agreement between the original owner of the whiskey and the defendant pursuant to which the whiskey was to remain in the warehouse until the money which the defendant had advanced to pay the United States revenue tax thereon should be repaid to him. The receipt stated that the whiskey was deliverable under the following conditions: "After the payment of the United States Internal Revenue tax and all other amounts due," followed by "tax paid." It was held that the title to the whiskey passed to the plaintiff upon the delivery to him of the receipt and that the defendant warehouseman, as well as the vendor of the whiskey, were estopped to make any claim for the amount advanced for the payment of the government tax. Further, that the expression "and all other amounts due" could only be *held* to mean proper warehouse charges. *State Bank of New York* v. *Waterhouse*, 70 Conn. 76.

Same—Same—Effect of statute as to full negotiability, quaere:—In the above case the court declined to discuss whether or not the statutes of this state gave to the warehouse receipts the character of full negotiability, this question not being then presented. *Id.*

R.

Bill of lading—Statements therein as to value, binding on shipper:—Where one shipped property by a common carrier and at the time of the shipment stated to the agent of the carrier that its value was one hundred dollars and such value is given in the bill of lading delivered to the shipper; it was *held* that the shipper is estopped to deny that the value of the property was in excess thereof; further, that the regulation of the railroad company requiring a statement as to value is a reasonable one and the shipper of goods was bound thereby. *Coupland* v. *Housatonic R. R. Co.*, 61 Conn. 531.

Same—When open to explanation—Statements contained therein conclusive on one issuing same:—It is well settled that as between a shipper and ship owner the receipt in a bill of lading is open to explanation. But where persons have been misled by statements contained in a false bill of lading, the master or other person issuing the same will be liable for such misrepresentations. *Relyea* v. *New Haven Rolling Mill Co.,* 42 Conn. 579.

Same—Exemption therein:—Where a bill of lading, issued by a common carrier, states that the carrier will not be liable for loss or injury resulting from certain specified causes therein, and in the case of an injury to a horse carried by it, the contention is made by the carrier that it is exempt from liability under this clause in the bill of lading, an instruction given to the jury, that the carrier was liable, if it should find that the loss occurred through lack of the exercise of ordinary care on the part of the carrier was correct. A carrier cannot stipulate against his own negligence. *Crosby* v. *Fitch,* 12 Conn. 410; *Welch* v. *Boston & Albany R. R. Co.,* 41 Conn. 333; *Camp* v. *Hartford & N. Y. Steamboat Co.,* 43 Conn. 333; *Candee* v. *N. Y., N. H. & H. R. R. Co.,* 73 Conn. 667. But see *Coupland* v. *Housatonic R. R. Co.,* 61 Conn. 532.

Same—Same—Liability may be reduced by stipulation:—It is competent for a carrier to stipulate for a consideration for a diminished degree of responsibility from that imposed by law, but such stipulation cannot be carried to the extent of granting the carrier immunity from the result of its negligence or want of ordinary care. *Id.*

CHAPTER VIII

DELAWARE

LAWS PERTAINING TO WAREHOUSEMEN

Lien of commission merchant, factor and carrier—Demand—Sale—Advertisement:—In all cases in which commission merchants, factors and all common carriers, or other persons, shall have a lien under existing laws upon any goods, wares, merchandise, or other personal property, for or on account of the costs or expenses of carriage, storage, or labor bestowed on such goods, wares, merchandise, or other personal property, if the owner or consignee of the same shall fail or neglect, or refuse to pay the amount of charges upon any such property, goods, wares, or merchandise, within sixty days after demand thereof, made personal upon such owner or consignee, or at his last known place of residence, then in such case it shall and may be lawful for any such commission merchant, factor, common carrier, or other person having such lien as aforesaid, after the expiration of said period of sixty days, to expose such goods, wares, merchandise, or other personal property to sale at public auction, and to sell the same, or so much thereof as shall be sufficient to discharge said lien, together with costs of sale and advertising; *Provided*, that notice of such sale, together with the name of the person or persons to whom such goods shall have been consigned, shall have been first published, for three successive weeks, in a newspaper published in the county, and by six written or printed hand-bills, put up in the most public and conspicuous places in the vicinity of the depot where said goods may be. Revised Statutes of Delaware 1893, page 816, being Act of March 5, 1867, Laws of Delaware, Vol. 13, Chap. 164, Sec. 1.

Of application to dispense with notice—Proviso:—Upon the application of any of the persons or corporations having a lien upon goods, wares, merchandise, or other property, as mentioned in the first section of this act, verified by affidavit, to any judge

of the Superior Court of this State, or to the Chancellor setting forth that the place of residence of the owner or consignee of any such goods, wares, merchandise, or other property is unknown, or that such goods, wares, merchandise or other property are of such perishable nature, or so damaged, or showing any other cause that shall render it impracticable to give the notice as required in the first section of this act, then, in such case, it shall and may be lawful for the Judge, or Chancellor, hearing such application, to make an order, to be by him signed, authorizing the sale of such goods, wares, merchandise, or other property upon such terms as to notice as the nature of the case may admit of and to such Judge shall seem meet; *Provided*, that in case of perishable property, the affidavit and proceedings required by this section, may be had before a Justice of the Peace. *Id.* Sec. 2.

Surplus moneys:—The residue of moneys arising from any such sales, either under the first or second sections of this act, after deducting the amount of the lien as aforesaid, together with costs of advertising and sales, shall be held subject to the order of the owner or owners of such property. *Id.* Sec. 3.

Warehouse receipts made negotiable:—Warehouse receipts given for any goods, wares, merchandise, grain, flour, produce, petroleum, or other commodities stored or deposited with any warehouseman, wharfinger or other person in this state, or bills of lading or receipts for the same when in transit by cars or vessels to any such warehouseman, wharfinger or other person, shall be negotiable and may be transferred by indorsement and delivery of said receipt or bill of lading; and any person to whom the said bill of lading or receipt may be transferred shall be deemed and taken to be owner of the goods, wares, merchandise therein specified, so as to give security and validity to any lien created on the same, subject to the payment of freight and charges thereon; and no property on which such lien may have been created shall be delivered by said warehouseman, wharfinger or other person, except on the surrender and the cancellation of said original receipt or bill of lading, or in case of partial sale or release of the said merchandise by the written consent of the holder of said receipt or bill of lading indorsed thereon; *provided*, that all warehouse receipts or bills of lading which shall have the words

"not negotiable" plainly written or stamped on the face thereof shall be exempt from the provisions of this act. Revised Statutes of Delaware, 1893, p. 530, being Act of May 15, 1891, Laws of Delaware, vol. 19, ch. 177, sec. 1.

When warehouseman may issue receipts:—No warehouseman, wharfinger, or other person shall issue any receipt or voucher for any goods, wares, merchandise, petroleum, grain, flour, or other produce or commodity to any person or persons purporting to be the owner or owners thereof, unless such goods, wares, merchandise, petroleum, grain, flour, or other produce or commodity shall have been actually received into store or upon the premises of such warehouseman, wharfinger or other person and shall be in store or on the premises aforesaid and under his control at the time of issuing such receipt. *Id.* sec. 2.

Duplicate receipts:—No warehouseman, wharfinger or other person shall issue any second or duplicate receipt for goods, wares, merchandise, petroleum, grain, flour, or other produce or commodity while any former receipt for any such goods, wares, merchandise, petroleum, grain, flour, or other produce or commodity as aforesaid, or any part thereof, shall be outstanding and uncancelled without writing across the face of the same "duplicate." *Id.* sec. 3.

Sale or incumbrance of stored property prohibited:—No warehouseman, wharfinger, or other person shall sell or incumber, ship, transfer, or in any manner remove beyond his immediate control any goods, wares, merchandise, petroleum, grain, flour, or other produce or commodity for which a receipt shall have been given by him as aforesaid, whether received for storage, shipping, grinding, manufacturing or other purposes, without the return of such receipt. *Id.* sec. 4.

Violation of act—Fraud—Penalty—Damages:—Any warehouseman, wharfinger, or other person, who shall violate any of the foregoing provisions of this act shall be deemed guilty of fraud, and upon indictment and conviction shall be fined in any sum not exceeding one thousand dollars or imprisoned not exceeding five years, or both, in the discretion of the court; and all and every person or persons aggrieved by the violation of any of the provisions of this act may have and maintain an action at law against the person or persons violating any of the fore-

going provisions of this act to receive (recover) all damages which he or they may have sustained by reason of any such violation as aforesaid, before any court of competent jurisdiction, whether such person shall have been convicted of fraud as aforesaid under this act or not. *Id.* sec. 5.

What the term "food" includes—Exception:—The term food as used in this act shall include any article used for food or drink by man or animal, with the exception that it shall not include and apply to the storing and refrigerating of fruits, or of fish. An Act relating to cold storage and refrigerating warehouses and places, and the sale or disposition of the food kept or preserved therein. Approved April 19, 1911—Delaware Laws 1911, page 350, Chap. 177, Sec. 1.

Food, except fruits, or fish, must be branded, stamped or marked:—It shall hereafter be unlawful for any person or persons, corporation or corporations, engaged in the business of cold storage warehousemen, or in the business of refrigerating, to receive any kind of food, with the exception of fruits, or fish unless the said food or the package containing the same is branded, stamped or marked, in some conspicuous place, with the day, month and year when the same is received for storage or refrigerating. *Id.* Sec. 2.

Unlawful to permit any article of food to be taken away, unless stamped or marked:—It shall be unlawful for any person or persons, corporation or corporations, engaged in the business of cold storage warehousemen or in the business of refrigerating within the State of Delaware, to permit any article of any kind whatsoever, used for food, now in the possession of any person or persons, corporation or corporations now engaged in the business of cold storage warehousemen or refrigerating, to be taken from their possession without first having branded, stamped or marked on the said stuffs or the package containing the same, in a conspicuous place, the day, month and year when said food stuffs or package was received by any person or persons, corporation or corporations engaged in the business aforesaid. *Id.* Sec. 3.

Shall not keep in storage more than six months without consent of Board of Health:—It shall hereafter be unlawful for any person or persons, corporation or corporations, engaged in the business of cold storage warehousemen or refrigerating within the State of Delaware, to keep in storage for preservation

or otherwise any kind of food or any article used for food for a longer period than six calendar months without the consent granted as hereinafter provided by the Board of Health having jurisdiction, or its duly authorized agents or officers, or except as hereinafter otherwise provided. *Id.* Sec. 4.

Board of Health given power and authority to inspect and supervise—May adopt rules and regulations—May appoint persons to make inspection:—The State Board of Health or the local Board of Health within the limits of any Municipal Corporation having such local Board, is vested with full power and authority to inspect and supervise all places in the State of Delaware now used or hereafter to be used for cold storage or refrigerating purposes; the members of the Board of Health having jurisdiction as aforesaid, or the duly authorized agents or employees of said Board shall be permitted access to such place or places and all parts thereof at all times for the purpose of seeing that said place or places are kept and maintained in a clean and sanitary manner, and for the purpose of determining whether or not the provisions of this act or any other act relating to food stuffs are being complied with. The power or supervision hereby granted shall extend to enable the State Board of Health as aforesaid to adopt such reasonable rules and regulations as may be determined upon from time to time as essential to the proper protection of the consumer of the commodities kept and preserved in such place or places, and the Board of Health having jurisdiction as aforesaid may appoint and designate from time to time such person or persons as they deem it fit for the purpose of making such inspection. *Id.* Sec. 5.

Shall submit a quarterly report to the Board of Health—When such report shall be filed:—All persons or corporations engaged in the business of cold storage warehousemen or in the business of refrigerating in the State of Delaware shall submit a quarterly report to the Board of Health having jurisdiction as aforesaid upon printed forms to be provided by said Board of Health, setting forth in itemized particulars the quantity of each and every food stuff in storage or in the control of said person or persons, corporation or corporations; said quarterly report shall be filed on or before the twenty-fifth day of January, April, July and October, of each year, and reports so rendered shall show conditions existing upon the first day of the month in which said report is filed. *Id.* Sec. 6.

In the event of food being kept longer than six months—Time may be extended—Not longer than eight months:—In the event of any food or any article used for food being kept or maintained in refrigerating or cold storage places for a longer period than six months, report of such fact shall be filed by the person or persons, corporation or corporations operating such cold storage or refrigerating place with the Board of Health having jurisdiction as aforesaid, upon blanks so provided by said Board of Health upon application, and no such food or article used for food shall, after the expiration of said period of six months, be delivered to any person or persons, corporation or corporations, without a certificate from the Board of Health having jurisdiction as aforesaid first had and obtained authorizing such delivery. Power is hereby given to said Board of Health, or its proper agents, to extend the time when any particular food stuff or article used for food may be kept, maintained or preserved in such place or places, but in no event shall permission be given to keep or maintain or preserve any food stuff for a longer term than eight months from the date of its reception in such place or places. *Id.* Sec. 7.

Transfer of food prohibited:—The transfer of any food from one cold storage or refrigerating warehouse to another for the purpose of evading any provision of this act is hereby prohibited. *Id.* Sec. 8.

Food kept for longer period shall be sold at auction—Within sixty days after time limit—Condemned food to be destroyed:—Any food kept or preserved in any cold storage warehouse or refrigerating place for a longer period than herein provided for shall be sold at public auction by the person or persons, corporation or corporations having the custody of the same, and at the place where the same is kept or preserved, within sixty days after the time limited for the keeping or preserving thereof, unless said food has been condemned as unfit for use by the Board of Health having jurisdiction as aforesaid, in which case it shall be destroyed or otherwise disposed of under such conditions as the said Board of Health may prescribe. *Id.* Sec. 9.

Poultry, or game, must have been drawn—Eggs to be kept in original crate or package—Marked with the date:—That it shall be unlawful for any person or persons, corporation or cor-

porations, firm or agent to dispose of poultry or game within the State of Delaware, that has not been drawn before being placed in cold storage. And that it shall be unlawful for any person or persons, corporation or corporations, firm or agent to dispose of any eggs that have been kept in cold storage except from the original crate or package, said crate to be marked with the date when said eggs were placed in said cold storage or refrigerator. *Id.* Sec. 10.

Penalty for violation of the provisions of the act:—Any person or persons, corporation or corporations, or officer or officers thereof, violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not less than one hundred dollars or more than one thousand dollars, or shall be imprisoned for a term not less than sixty days or more than one year, or shall be sentenced with a fine or imprisonment or both in the discretion of the Court. *Id.* Sec. 11.

Shall not apply to fruits or fish:—Nothing in this act shall be held to affect or apply to the storing or refrigerating of fruits or fish. *Id.* Sec. 12.

DECISIONS AFFECTING WAREHOUSEMEN

A.

Bailment defined:—A bailment consists in the delivery of some personal property, the subject of larceny, by one person to another, to be held according to the purpose or object of the delivery, and to be returned or delivered over when that purpose is accomplished. *State* v. *Sienkiewiez, et al.*, 55 Atl. 346.

Bailment—With and without an interest:—In a bailment to keep property without an interest the bailee is liable only for gross negligence, but with an interest he is bound to exercise reasonable diligence, and he is liable for slight negligence on a special undertaking. *Chase* v. *Maberry*, 3 Harr. 266; *Culbreth* v. *P. W. & B. R. R. Co.*, 3 Houst. 392.

B.

Ordinary care:—Warehousemen are obliged to exercise only ordinary care. *McHenry* v. *P. W. & B. R. R. Co.*, 4 Harr. 448; *Chase* v. *Maberry*, 3 Harr. 266; *Culbreth* v. *P. W. & B. R. R.*

Co., 3 Houst. 392; *H. J. Keith Co.* v. *Booth Fisheries Co.*, 87 Atl. 715.

Same—Reasonable diligence defined—Reasonable diligence is that which a prudent man would use in respect to his own property. *Id.*

H.

Lien—Lost if possession be surrendered:—If the bailee surrenders possession of the pledge to the bailor, his lien is gone. *Scott* v. *Heather*, 1 Harr. 330.

L.

Replevin—No demand necessary:—Under the statutory law in the state of Delaware no previous notice is necessary before replevin brought, although defendant may have come into possession of the goods lawfully. *Stockwell* v. *Robinson*, 9 Houst. 313.

Cold storage—Averments in Declaration Alleging Damage:—The warehouse mentioned in the first and second counts of the declaration was described as a "cold storage warehouse" but there was no averment that defendant had agreed to keep plaintiff's eggs in a frozen condition. The court pointed out that it was a well known fact that all articles stored in a cold storage warehouse were not kept frozen and hence, upon demurrer, these counts were held insufficient in this particular. In the third count not only was the warehouse described as a cold storage warehouse but the averment was made that the defendant well knew that the goods were to be kept frozen therein. The court held this count contained a sufficient averment of the defendant's duty and hence the demurrer thereto was overruled. *H. J. Keith Co.* v. *Booth Fisheries Co.*, 86 Atl. 166.

N.

Negligence—Warehouseman entitled to storage charges up to time of injury of goods:—While a warehouseman is liable in damages for injury to goods resulting from his negligence nevertheless he is entitled to reasonable expenses for storage up to the time the injury was done to the goods and the amount allowed the owner of the goods for the injury should be reduced by the amount allowed the warehouseman for expenses of storage. *H. J. Keith Co.* v. *Booth Fisheries Co.* 87 Atl. 715.

Same—Burden of proof:—Where property is damaged while in the exclusive custody of a warehouseman it is incumbent upon him to satisfy the jury that the damage was not occasioned by the negligence of himself, his servant or agent. *Id.*

O.

Measure of damages—Interest:—Where stored property has been damaged as a result of the defendant warehouseman's negligence the jury should return a verdict for a sum of money which would reasonably compensate plaintiff for the loss he has sustained and interest thereon. The measure of damages in such a case is the difference between the value of the goods in their damaged state and what would have been their value if defendant had kept and delivered them in good condition. *Id.*

R.

Bill of lading—Indorsement—Bona fide holder—Fraud:—The indorsement and delivery of a bill of lading is equivalent to the delivery of the goods. Fraud on the part of the indorser cannot affect the title of the indorsee in good faith. The voluntary delivery of a bill of lading consigning goods "to order or assigns" confers all the external *indicia* of the right of disposal. *Mears* v. *Waples,* 3 Houst. 581; *Same* v. *Same,* 4 Houst. 62.

CHAPTER IX

DISTRICT OF COLUMBIA

LAWS PERTAINING TO WAREHOUSEMEN

The Uniform Warehouse Receipts Act is in force in the District of Columbia. It was approved April 15, 1910, 36 U. S. Stats., at L., Part I, ch. 167, p. 301 and D. of C. Code, 1911, p. 419; also this volume p. 1.

Lien of warehousemen:—Every person, firm, association, or corporation lawfully engaged in the business of storing goods, wares, merchandise, or personal property of any description shall have a lien first, except for taxes thereon, for the agreed charges for storing the same, and for all moneys advanced for freight, cartage, labor, insurance, and other necessary expenses thereon. Said lien for such unpaid charges, upon at least one year's storage and for the aforesaid advances in connection therewith, may be enforced by sale at public auction, after thirty days' notice in writing mailed to the last known address of the person or persons in whose name or names the said property so in default was stored, and said notice shall also be published for six days in a daily newspaper in the District of Columbia. And after deducting all storage charges, advances, and expenses of sale, any balance arising therefrom shall be paid by the bailee to the bailor of such goods, wares, merchandise, or personal property, his assigns or legal representatives. D. C. Code, 1902, sec. 1619.

Assignee:—Said property may be sold either in bulk or in separate pieces, articles, packages, or parcels, as will in the judgment of the lien holder secure the largest obtainable price: *Provided*, That if the person or persons storing said property shall have assigned or transferred the title thereto and have duly recorded said assignment or transfer upon the books of the storage warehouse, the written notice of sale shall also be mailed to said transferee or assignee. *Id.* sec. 1620.

Where title in issue:—Whenever the title or right of possession to any goods, wares, merchandise, or personal property on storage shall be put in issue by any judicial proceeding, the same shall be delivered upon the order of the court, after prepayment of the storage charges and cash advances then due, by the person at whose instance such change of possession is so ordered, and who shall be entitled to recover such payment as part of the costs in such proceeding, or, if defeated therein, he shall be credited with such payment in taxation of costs against him. And unless the person, firm, association, or corporation so conducting a storage business shall claim some right, title, or interest in said stored property other than the lien hereinabove authorized, he, it, or they shall not be made a party to such judicial proceedings. *Id.* sec. 1621.*

Warehousemen—Embezzlement:—Any warehouseman, factor, storage, forwarding or commission merchant, or his clerk, agent, or employee, who, with intent to defraud the owner thereof, sells, disposes of, or applies or converts to his own use any property intrusted or consigned to him, or the proceeds or profits of any sale of such property, shall be deemed guilty of embezzlement, and shall suffer imprisonment for not more than ten years. *Id.* sec. 838.

DECISIONS AFFECTING WAREHOUSEMEN

A.

Bailment—Identical goods:—Where one receives certain bonds and contracts for "the safe return of said bonds," his obligation is to return the identical bonds and not an equivalent amount in similar bonds. *Moses* v. *Taylor* 6 Mack. 255.

Same—Bailee cannot confer title:—A mere bailee for hire, though in possession, cannot give title to a third person. *Bridget* v. *Cornish*, 1 Mack. 29.

Same—When convertible into a sale—Assumpsit:—Goods delivered with the understanding that the bailee may, at his option, appropriate them to his own use and pay their value, is

* NOTE. In New York a statute similar to section 1621 *held* unconstitutional. See *Cottew* v. *Dube*, 32 Misc. 632; *Follett Wool Co.* v. *Albany Terminal Warehouse Co.*, 61 App. Div. 296; *Mulligan* v. *Brooklyn Warehouse & Storage Co.*, 34 Misc. 55.

a bailment convertible into a sale at the option of the bailee; and when they are so converted the original bailor may sue in *assumpsit* for goods sold and delivered. *Moses* v. *Taylor,* 6 Mack. 255.

Same—Statute of limitations:—It is only from the time that the bailee sets up an adverse claim to the property that the statute is put in operation and begins to run. *Marr* v. *Kubel,* 4 Mack. 577; *Moses* v. *Taylor,* 6 Mack. 255.

B.

Conversion—Not embezzlement:—A bailee who converts property of his bailor to his own use is not thereby guilty of embezzlement in this jurisdiction, but is guilty of a breach of trust. *Tiedt* v. *Evening Star Newspaper Co.,* 19 D. C. 534. (But see sec. 838, D. C. Code, *supra.*)

Storage charges—When tender not necessary—Replevin:—Where a demand is made upon a warehouseman for the delivery of goods stored with him a tender of the storage charges is not necessary before replevin brought, where refusal to deliver is based upon another and a different ground. *Wall* v. *De Mitkiewicz,* 9 App. D. C. 109.

Same—When charges not paid, writ will be quashed:—Where goods were replevied upon which storage charges were due the writ will be quashed upon this showing, in the absence of fraud, or neglect on the part of the warehouseman. *In re American Security & Trust Co.,* 25 W. L. R. 733.

C.

Safe deposit—Receipt—Contents in "possession" of lessees:—Where a receipt for a safe deposit box stated it was only to be opened in the presence of both lessees it attempted to impose an unusual liability upon the company which was possibly beyond the power of the lessees to impose. Contents held to be in lessees' "possession" *Carusi* v. *Savary,* 6 App. D. C. 330.

Same—Contents subject to attachment—Bailee liable to be garnisheed therefor:—Under the provisions of sections 447, 456 and 1089 of the District of Columbia Code, property of a defendant in a safe deposit box in a trust company may be reached by a writ of garnishment against the trust company. *Washing-*

ton Loan & Trust Co. v. *Susquehanna Coal Co.*, 26 App. D. C. 149.

H.

Lien for storage charges, paramount—Replevin:—Where goods were advertised to be sold for storage charges and the bailor procured writ of replevin which was served on auctioneer during sale, on a motion to quash this writ it was *held* that the act of Congress of May, 1896, relating to warehousemen was mandatory giving warehousemen a lien for their charges. The marshal was thereupon instructed to return the goods to the warehouseman. *In re American Security & Trust Co.*, Ed. note, 25 W. L. R. 733.

Storage charges—Void sale for—Compliance with statute essential:—A sale of chattels to satisfy charges of a warehouseman must comply with the terms of the statute under which the sale is made. A failure to observe the statutory requirements in respect to notice makes the sale absolutely void and a purchaser takes no title to the chattels. *Baum* v. *Wm. Knabe & Co.*, 33 App. D. C. 237, 241.

L.

Trover—Statute of limitations:—In trover the conversion is shown by proof of demand and refusal, and limitations only run from the date of such demand and refusal. *Moses* v. *Taylor*, 6 Mack. 255.

Detinue—Gist of the action—Pleading:—In detinue the gist of the action is the wrongful detainer and not the original taking. It lies against the person who has the actual possession of the chattel or who acquired it by any lawful means, such as bailment, delivery or finding; therefore, although a declaration in detinue alleges a bailment to the defendant, and his engagement to redeliver on request, and the defendant has pleaded that the bailment was the security on a loan, the plaintiff may, without being guilty of a departure, reply that he tendered the debt and that the defendant afterwards wrongfully withheld the goods. *Wiard* v. *Semken*, 2 App. D. C. 424.

Same—No previous demand necessary:—In an action of detinue no proof of a previous demand is necessary, the serving

of a summons being a sufficient demand. *Marr* v. *Kubel*, 4 Mack. 577.

M.

Pledge—Pledge made by pledgee to one in good faith—Replevin:—The pledgee of goods in turn pledged them with another as security for the payment of a personal obligation without any notice that the goods were held as a pledge. The goods were returned to the original pledgee prior to suit brought. In an action of replevin, brought for the recovery of the goods against the second pledgee, the court instructed the jury that if they believed that the defendant received the goods in good faith, not knowing in what capacity the pledgor held them, and had returned the goods to his pledgor before suit brought, that they should find for the defendant. *Held* on appeal that this instruction was correct. *Carpenter* v. *Starr*, I Mack. 417.

Same—Detinue—Pleading and practice—Confession and avoidance:—Plaintiff sued defendant in detinue and, in his declaration, stated that the defendant detained the goods upon a bailment for a redelivery upon request; the defendant pleaded specially that he held the goods as security for a debt. *Held*, that the plaintiff, in his replication, could properly state payment of the debt in confession and avoidance, this not constituting a variance. Further *held*, that in the plea *non detinet* that the defendant could not show that he retained the goods as security for a debt but that the special plea was necessary. *Wiard* v. *Semken*, 2 App. D. C. 424.

R.

Bill of lading—Exemptions in receipt given by expressman—Not valid as against negligence—Rules stated:—If the receipt given by an expressman contains the expression that he is not liable as a carrier but as a "forwarder only" such expression will be construed by the court as a nullity. The law imposes upon expressmen the liabilities of the common carrier. A provision in such a receipt that the expressman will be only liable for such sum as the shipper states the value of the goods to be, held to be a reasonable and binding regulation. But no stipulation can be made by an expressman or other carrier which will exonerate him from liability for the results of his negligence, such contracts being void as against public policy. *Galt Bros. & Co. v. Adams Express Co.*, Mac. A. & M. 124.

CHAPTER X

FLORIDA

LAWS PERTAINING TO WAREHOUSEMEN

Sale of goods under specified circumstances:—Warehousemen and wharfingers shall be authorized to sell at public auction all goods, wares, and merchandise or other articles commonly designated as "perishable," such as fruits, vegetables, meats and so forth, that shall have been received by them, remaining on hand unclaimed for the space of not less than ten days, and all goods, wares and merchandise, or other articles not perishable, that shall have been received by them and remaining on hand unclaimed for the space of not less than ninety days, but such sale shall, in no instance, take place without previous notice having been first given for at least two days after the expiration of said ten days, or more, in the case of perishable goods, wares and merchandise or other articles, or for at least thirty days after the expiration of ninety days, or more, in the case of goods, wares and merchandise, or other articles that are not perishable, said previous notice to be given in one newspaper published at the place of sale, designating the time and place of sale. If there is no newspaper published at the place of said sale, wherein the legal notice can be given, then public notice can be given by five written notices posted in conspicuous places near the place of sale. The owner or consignee of such goods, wares and merchandise or other articles, may at any time prior to such sale come forward and claim the same, and after paying all charges be entitled to restitution. General Stats. Fla., 1906, sec. 3127.

Disposition of surplus:—After all charges upon said goods and merchandise or other articles are paid, (not exceeding the ordinary mercantile charges for such locality) should there remain a surplus, the same shall be placed in the county treasury subject to the claim of the owner of said goods, wares and merchandise, or other articles. After the lapse of one year from

the time of placing said surplus in the county treasury, should no person come forward to claim and receive the same, it shall be applied by the county commissioners of the county for the relief of the poor of such county. *Id.* sec. 3128.

Warehousemen to give receipt:—Any warehouseman, wharfinger, timber and lumber inspector, or other bailee of like character, whether a natural person or a corporation, may be required by any person from whom he or it shall receive personal property as such bailee, at the time it shall be so received, to give a receipt to such person for such property, describing the property and agreeing to deliver the same to the order of such depositor upon return of such receipt. Such receipt shall be negotiable by endorsement, which shall transfer to the endorsee the title, right of possessing and remedies of each prior endorsee. Such receipt may be deposited as collateral security. *Provided,* That nothing herein shall be construed as making any such bailee a warrantor of title. *Id.* Sec. 3129.

When property is substituted:—If any property, or any part thereof, which has been or shall be delivered in accordance with the preceding section, and for which such receipt shall have been given and shall be outstanding, shall be removed from the place where it was subject to such receipt on storage or deposit, and other property of a like nature, grade, and quality shall be substituted therefor at such place, such substituted property shall be subject and answerable to such receipt, and the title, right of possession, interest and remedies which existed upon or under such receipts to, of and concerning the property originally covered by such receipt shall apply to and continue to, of, in and concerning such substituted property as though it were the original property for which such receipt was given. If any property which is or shall be so on storage or deposit, shall be so mixed or mingled with other property of a like nature, grade and quantity that it can not be identified, a quantity of property for which such receipt shall have been given shall be subject and answerable to such receipt and shall be delivered according to the terms thereof, and the title, right of possession, interest and remedies which existed upon or under such receipt to, of, in or concerning the property originally covered by such receipt shall apply to and continue to, of, in and concerning such quantity of such mingled or mixed property as though it were

the original property for which such receipt was given; but nothing herein contained shall be construed to authorize such warehouseman, wharfinger, timber and lumber inspector, or such bailee who shall have given such receipt, so to remove, mix or mingle the property for which such receipt shall have been given, but the obligation or liability of such maker of such receipt for the delivery of the property for which it shall have been given according to its terms, and the title, right of possession, interest and remedies of any person owning, holding or being interested in such receipt to, of, in or concerning the property originally covered by such receipt shall continue until such receipt shall have been satisfied by delivery of property accepted by the holder thereof. *Id.* sec. 3130.

Burning other buildings in the night time:—Whoever willfully and maliciously burns in the night time a meeting-house, church, court-house, town-house, college, academy, jail or other building erected for public use, or a banking-house, warehouse, manufactory or mill of another, or a barn, stable, shop or office within the curtilage of a dwelling house, or any other building, by the burning whereof any building mentioned in this section is burnt, in the night time, shall be punished by imprisonment in the state prison not exceeding twenty years. General Stats. Fla. 1906, sec. 3274.

Same—Burning in day time:—Whoever willfully and maliciously burns in the day time any building mentioned in the preceding section shall be punished by imprisonment in the state prison not exceeding ten years. *Id.* sec. 3275.

Embezzlement by bailee, common carrier and hirer:—If any factor, commission merchant, warehouse keeper, wharfinger, wagoner, stage driver or other common carrier on land or on water, or any other person with whom any property which may be the subject of larceny is intrusted or deposited by another, shall embezzle or fraudulently convert the same, or any part thereof, or the proceeds, or any part thereof, to his own use, or otherwise dispose of the same, or any part thereof, without the consent of the owner or bailor and to his injury, and without paying to him on demand the full value or market price thereof; or if, after a sale of any of the said property with the consent of the owner or bailor, such person shall fraudulently and without consent aforesaid convert or embezzle the proceeds, or

any part thereof, to his own use and fail or refuse to pay the same over to the owner or bailor on demand; and if any person borrows or hires property aforesaid and embezzles or fraudulently converts it or its proceeds, or any part thereof, to his own use, he shall be punished as if he had been convicted of larceny. *Id.* sec. 3308.

DECISIONS AFFECTING WAREHOUSEMEN

A.

Bailment—Lien under common law:—Under the common law the lien of the bailee does not, as against the bailor, extend to the persons employed under the bailee. *Wright* v. *Terry,* 23 Fla. 160.

Same—Gratuitous:—A bailee or factor is bound to follow such instructions as are given to him by his principal, unless the instructions are inconsistent with the special agreement between them; and is liable for any injury resulting from a departure from such instructions; and this liability is incurred, although the services undertaken were gratuitous. *Ferguson* v. *Porter,* 3 Fla. 27.

Same—Transfer of title—Bailee's assent—Effect of:—If the bailee, either expressly or impliedly, signify his assent to the transfer, he makes himself the bailee of the purchaser, and there is thereby such a privity established between the parties as will be sufficient to sustain an action between them. *Mitchell* v. *McLean,* 7 Fla. 329.

B.

Diligence defined:—Common or ordinary diligence, in the sense of the law, is such as men of common prudence generally exercise about their own affairs. *West* v. *Blackshear,* 20 Fla. 457.

F.

Carriers—When liable as warehousemen—Ordinary care:—A car containing certain government stores was hauled into claimant's depot, and claimant's agent, finding no shipping instructions accompanying the property applied to the proper government officer for the same. The officer promised to send the bill of lading, and claimant not receiving same stored the property in a warehouse, where it was destroyed by fire. *Held,* That

the liability of a common carrier in respect to goods begins when there has been a complete delivery and the goods are ready for shipment, that the claimant in the case of this property was a warehouseman, chargeable only with ordinary diligence and not a common carrier, and no negligence having been shown, it was not chargeable with the loss. *Louisville & Nashville R. R. Co.* v. *U. S.*, 39 Ct. Cl. 405.

N.

Negligence—Defined—Must be proved:—Negligence is the failure to observe for the protection of another's interests such care, precaution and vigilance as the circumstances justly demand and the want of which causes him injury. Negligence cannot be presumed but must be affirmatively shown. *Jacksonville Street Railway Co.* v. *Chappell*, 21 Fla. 175; *Bucki* v. *Cone*, 25 Fla. 1.

CHAPTER XI

GEORGIA

LAWS PERTAINING TO WAREHOUSEMEN

Warehouseman:—A warehouseman is a depositary for hire, and is bound only for ordinary diligence; a failure to deliver the goods on demand makes it incumbent on him to show the exercise of ordinary diligence. Code Ga., 1911, Vol. I, sec. 3503.

Bonded Public Warehousemen:—Any person engaged in the business of a warehouseman, or any corporation organized under the laws of this state, and whose charter authorizes them to engage in the business of a warehouseman within this state, may, if they so desire, become a bonded public warehouseman, and authorized to keep and maintain bonded public warehouses for the storage of cotton and other goods, wares, and merchandise as hereinafter prescribed, upon their giving the bond hereinafter required. *Id.* sec. 2910.

Bond to be given; the sureties:—Every person or corporation desiring to become a bonded public warehouseman, under the authority granted by the preceding section, shall give bond to an amount based on the estimated value said warehouseman will provide storage for. Said bond shall be made payable to the clerk of the superior court of the county wherein such bonded public warehouse is situated, and be conditioned for the faithful performance of his duties and liabilities as a bonded public warehouseman under the provisions of this section. The surety or sureties upon said bond shall be some one or more of the guarantee, surety, fidelity-insurance, or fidelity and deposit companies which are described in paragraphs 2554 to 2562, all of which paragraphs are applicable to bonds given under this section so far as they are pertinent. The clerk of the superior court shall fix the amount of the bond and approve the surety. *Id.* sec. 2911.

Liability or principal and surety:—Whenever such bonded public warehouseman fails to perform his duty as such, or vio-

lates any of the provisions of this law relating to bonded public warehousemen, any person injured by such failure or violation may bring his action in a court of competent jurisdiction against the principal and sureties upon the bond of said warehouseman. *Id.* sec. 2912.

Insurance of property stored and receipts:—Every such bonded public warehouseman shall cause to be insured for the benefit of whom it may concern, unless requested not to insure by the owner, all property placed in storage with him in his said bonded public warehouse, such insurance to be so taken out as to cover and protect said property from the time it is so stored with him. Every such warehouseman shall, except as hereinafter provided, give to each person depositing property with him for storage a receipt therefor, which shall be negotiable in form, and shall rescribe the property, distinctly stating the brand or distinguishing marks upon it, and, if such property is grain, the quantity and inspected grade thereof. The receipt shall also state the rate of charges for storing the property, the amount and rate of insurance thereon, and also the amount of the bond given to the clerk of the court, as hereinabove provided: Provided, however, that every such warehouseman shall, upon request of any person depositing property with him for storage, give to such person his non-negotiable receipt therefor, which receipt shall have the words "non-negotiable" plainly written, printed, or stamped on the face thereof: And provided, that no assignment of such non-negotiable receipt shall be effective until recorded on the books of the warehouseman issuing it: Provided further, that the non-negotiable receipt may surrendered at any time by the owner thereof, and a negotiable receipt issued in lieu of the same. *Id.* sec. 2913.

Title passes by transfer of receipt:—The title to cotton and other goods, wares, and merchandise stored in such bonded public warehouses shall pass to a purchaser or pledge thereof by the delivery to him of the said warehouseman's receipt therefor, with an endorsement thereon to such purchaser or pledge, signed by the person to whom such receipt was originally given by said warehouseman or by the endorsee of such receipt. *Id.* sec. 2914.

Mixed grain or other property:—When grain or other property is stored in such bonded public warehouses in such a man-

ner that different lots or parcels are mixed together, so that the identity thereof can not be accurately preserved, the warehouseman's receipt for any portion of such grain or property shall be deemed a valid title to so much thereof as is designated in said receipt, without regard to any separation or identification. *Id.* sec. 2915.

Shall keep books open to inspection:—Every such warehouseman shall keep a book in which shall be entered an account of all his transactions relating to warehousing, storing, and delivering cotton, goods, wares, and merchandise, and to the issuing of receipts therefor, which book shall be open to the inspection of any person actually interested in the property to which such entries relate. *Id.* sec. 2916.

Sale for overdue storage:—Every bonded public warehouseman who shall have in his possession any property by virtue of any agreement or warehouse receipt for the same, on which a claim for storage of the same is at least one year overdue, may proceed to sell the same at public auction, and out of the proceeds may retain all charges for storage on such goods, wares, and merchandise, and any advances that may have been made thereon by him on them, with legal interest thereon, and the expenses of advertising and sale thereof. But no sale shall be made until after the giving of printed or written notice of such sale to the person or persons in whose name such goods, wares, and merchandise were stored, requiring him or them, naming them, to pay the arrears or amounts due for such storage; and in case of default in so doing, the goods, wares, and merchandise may be sold to pay the same at a time and place to be specified in such notice. *Id.* sec. 2917.

Notice, how served, or given:—The notice required in the last preceding section shall be served by delivering to the person or persons in whose name such goods, wares, and merchandise were stored, or by leaving it at his usual place of abode, if within this state, at least thirty days before the time of such sale, and a return of the service shall be made by some officer authorized to serve civil process, or by some other person with an affidavit of the truth of the return. If the party storing such property can not with reasonable diligence be found within this state, then such notice shall be given by publication once in

each week for two successive weeks, the last publication to be at least ten days before the time of such sale, in a newspaper published in the city or town where such warehouse is located, or, if there is no such paper, in one of the principal papers published in the county in which said city or town is located. In the event that the party storing such goods shall have parted with the same, and the purchaser shall have notified the warehouseman, with his address, such notice shall be given to such person in lieu of the person storing the goods. *Id.* sec. 2918.

Proceeds of sale:—Such bonded public warehouseman shall make an entry, in a book kept for the purpose, of the balance or surplus of proceeds of sale, if any, and such balance or surplus, if any, shall be paid over to such person or persons entitled thereto, on demand. *Id.* sec. 2919.

Sale of perishable property:—Whenever a bonded public warehouseman has in his possession any property which is of a perishable nature, or will deteriorate in value by keeping, or upon which the charges for storage will be likely to exceed the value thereof, or which by its odor, leakage, inflammability, or explosive nature is likely to injure other goods, such property having been stored upon non-negotiable receipt, and when said warehouseman has notified the person in whose name the property was received to remove said property, but such person has refused or omitted to receive and take away such property and to pay the storage and proper charges thereon, said bonded public warehouseman may, in the exercise of a reasonable discretion, sell the same at public or private sale without advertising, and the proceeds, if there are any proceeds, after deducting the amount of said storage and charges and expenses of sale, shall be paid or credited to the person in whose name the property was stored; and if said person can not be found, on reasonable inquiry, the sale may be made without any notice, and the proceeds of such sale, after deducting the amount of storage, expenses of sale, and other proper charges, shall be paid to the person entitled to the same. *Id.* sec. 2920.

Unsalable property:—When a bonded public warehouseman, under the provisions of the preceding section, has made a reasonable effort to sell perishable and worthless property, and has been unable to do so because of its being of little or no

value, he may then proceed to dispose of such property in any lawful manner, and he shall not be liable in any way for property so disposed of. *Id.* sec. 2921.

Storage, liability for:—When a bonded public warehouseman, under the provisions of the two preceding sections, has sold or otherwise disposed of property, and the proceeds of such sale have not equaled the amount necessary to pay the storage charges, expenses of sale, and other charges against said property, then the person in whose name said property was stored shall be liable to said bonded public warehouseman for any amount which, added to the proceeds of such sale, will be sufficient to pay all the proper charges upon said property; or in case such property was valueless and there were no proceeds realized from its disposition, the person in whose name said property was stored shall be liable to said public warehouseman for all proper charges against said property. *Id.* sec. 2922.

Definition:—A bailment is a delivery of goods or property for the execution of a special object, beneficial either to the bailor or bailee, or both; and upon a contract, express or implied, to carry out this object and dispose of the property in conformity with the purpose of the trust. *Id.* sec. 3467.

Property in bailee:—In all cases the bailee, during the bailment, has a right to the possession of the property, and in most cases a special right of property in the thing bailed. For a violation of these rights by any one he is entitled to his action. *Id.* sec. 3468.

Burden of proof:—In all cases of bailment after proof of loss, the burden of proof is on the bailee to show proper diligence. *Id.* sec. 3469.

Care and diligence:—All bailees are required to exercise care and diligence in protecting and keeping safely the thing bailed. Different degrees of diligence are required according to the nature of the bailments. *Id.* sec. 3470.

Ordinary:—Ordinary diligence is that care which every prudent man takes of his own property of a similar nature. The absence of such diligence is termed ordinary neglect. *Id.* sec. 3471.

Liens of pawnees, etc.:—Pawnees, factors, bailees and acceptors shall have such liens as are in this Code designated. Such liens shall be inferior to liens for taxes, liens of which such persons had actual notice before becoming creditors, special liens for rent, liens of laborers, liens or mortgages duly recorded, judgment liens, and other general liens reduced to execution and levied. *Id.* sec. 3362.

Deposits for hire:—Depositaries for hire are bound to exercise ordinary care and diligence, and are liable as in other cases of bailment for hire; they have a lien also for their hire, and may retain possession until it is paid. *Id.* sec. 3501.

Bailee must show no concurring negligence:—In order for a carrier or other bailee to avail himself of the act of God or exception under the contract as an excuse, he must establish not only that the act of God or excepted fact ultimately occasioned the loss, but that his own negligence did not contribute thereto. *Id.* sec. 2713.

In cases of bailments:—In cases of bailments, where the possession is in the bailee, a trespass committed during the existence of the bailment will give a right of action to the bailee for the interference with his special property, and a concurrent right of action to the bailor for the interference with his general property. *Id.* sec. 4486.

Effect of tender:—A valid tender of chattels transfers the title thereto to the person bound to receive; and the possession of the promissor, if he retains possession from that time, is for benefit of the owner, but without liability to account for profits, or for more than ordinary prudence in their preservation and protection. *Id.* sec. 4325.

Any bailee fraudulently converting the goods or proceeds:—If any factor, commission merchant, warehouse keeper, wharfinger, wagoner, stage driver, or common carrier on land or water, or any other bailee, with whom any money or any other thing of value may be intrusted or deposited, shall fraudulently convert the same, or any part thereof, to his own use, or shall otherwise dispose of the same, or any part thereof, without the consent of the owner or bailor, and to his injury, and without paying to such owner or bailor, on demand, the full value or market price thereof, he shall be punished by imprisonment and

labor in the penitentiary for not less than two years nor longer than seven years. Code Ga., 1911, Vol. 2, sec. 189.

Conversion of proceeds of sale:—If any bailee, with whom any money or other thing of value may be intrusted or deposited, shall, after a sale of any of said articles with the consent of the owner or bailor, fraudulently, and without the consent of the owner or bailor, convert the proceeds or any part thereof to his own use, and fail or refuse to pay the same over to such owner or bailor on demand, he shall be punished by imprisonment and labor in the penitentiary for not less than two years nor longer than seven years. *Id.* sec. 190.

Unlawful disposition of deposited goods:—Whoever unlawfully sells, pledges, lends, or in any other way disposes of, or permits, or is a party to the unlawful selling, pledging, lending, or other disposition of any goods, wares, merchandise, or thing deposited in a bonded public warehouse, without the authority of the party who deposited the same, or the lawful transferee or endorsee of the reecipt given therefor, shall be punished by a fine not to exceed $2,000. and by imprisonment in the state penitentiary for not more than three years. But no bonded public warehouseman shall be liable to the penalties provided in this section, unless with intent to injure or defraud any person to whom he so sells, pledges, lends, or in any other way disposes of same, or is a party to the unlawful selling, pledging, lending, or other unlawful disposition of any goods, wares, merchandise, article, or thing so deposited and receipted for by him. *Id.* sec. 701.

DECISIONS AFFECTING WAREHOUSEMEN

A.

Bailment—Essence of contract:—The essence of a contract of bailment on the part of a bailee is for diligence of the required degree, and when he has used such diligence his contract is fulfilled and he is discharged although the property may be lost during his custody of it. *Merchants Nat. Bank of Savannah* v. *Guilmartin,* 88 Ga. 797.

Same—Special deposit in bank—Care in selecting employees:—A bank is not liable for the loss of a special deposit, for which it receives no compensation, by the theft of its cashier or other

servant, provided it has not been guilty of gross negligence in any respect. The negligence of the bank may consist in retaining an unfit person in the position of cashier or other position. But when it does its full duty in selecting the proper person and in not disregarding indications of dishonesty, which ought to arouse suspicion and investigation, it is not responsible to one who had obtained from it the favor of keeping specific property without recompense, although the cashier or other employee steal the property so put in its charge. *Id.* (This case, on the ground of improper instruction to the jury, was sent back for a new trial and the plaintiff again obtained a verdict which on appeal, reported in 93 Ga. 503, was affirmed, the court holding the bank guilty of a want of diligence.)

Same—Action by bailor or bailee—Measure of damages:— In an action of trover by a bailee, or special-property man, against the general owner, the measure of his damages is the value of his special property only; but when the action is by the bailee or special-property man, against a stranger or wrongdoer, the plaintiff is entitled to recover the full value of the property converted by the defendant and hold the balance, beyond his own interest, for the general owner. *Schley* v. *Lyon & Rutherford, Trustees*, 6 Ga. 530.

Same—Trespass against bailed property—Rights of action:— In all cases of bailment, where the property is in possession of the bailee, and a trespass is committed during the continuance of the bailment, this gives the bailee a right of action for the interference with his special property, and a concurrent right to the owner or bailor, for the interference with his general property. Code, secs. 2141, 2191, 3030; *Lockhart* v. *Western & Atlantic R. R. Co.*, 73 Ga. 472.

Same—Tort may be waived and suit maintained on contract: —Where a bailee is rightfully in possession of property, and a tort arises out of a breach of the bailee's duty, the bailor may waive the tort and maintain assumpsit upon the contract. *Ford & Co.* v. *Atlantic Compress Co.*, 75 S. E. 609.

Same—Statute of limitations in case of—Mutual account:— Where a warehouseman and one of his customers maintained a mutual account which had been running for a period of over six years, it was *held* that the statute of limitations did not begin

to run until the last charge or item of the account. *Flournoy & Epping* v. *Wooten* et al. 71 Ga. 168.

Same—Conversion—When statute of limitations begins to run:—The statute of limitations begins to run when the bailee for hire holds the goods adversely to the title of the bailor; the possession immediately ceases to be adverse in consequence of the return of the bailee to his duty as such. *Harrel* v. *Wright et al., Exrs.*, 57 Ga. 484; *Blount, Admr.*, v. *Beall*, 95 Ga. 182.

Evidence—Negligence—Question of law:—In an action against a bailee, the question of negligence is a question of law for the court to determine, but the facts, from which it is, or is not, inferred, must be found by the jury. *Morel* v. *Roe*, R. M. Charl. 19.

Same—When burden of proof on bailee:—In all cases of bailment, after proof of loss, the burden of proof is on the bailee to show proper diligence. Civil Code, sec. 2696. *Massilion Engine & Thrasher Co.* v. *Akerman et al.*, 110 Ga. 570; *Concord Variety Works* v. *Beckham*, 112 Ga. 242.

B

Warehouseman—Ordinary care—Duty of, defined:—A warehouseman is only bound to exercise that degree of ordinary diligence in taking care of property stored with him which a prudent man would exercise in taking care of his own property. *Cunningham* v. *Franklin, Read & Co.*, 48 Ga. 531; *Merchants Nat. Bank of Savannah* v. *Guilmartin*, 93 Ga. 503; *Knight* v. *Wrightsville & T. R. R. Co.*, 127 Ga. 204.

Same—Collection of ginning charges—Not ultra vires:—A cotton ginner verbally contracted with a cotton warehouse corporation to deliver to it all cotton ginned by him, and the company agreed to collect for him the ginning charges when customers of the warehouse took their cotton out. Suit for amount due on cotton ginned and delivered to warehouse which the company had delivered to customers without collecting the charges. *Held*: That under the evidence the contract was beneficial to both parties and was not unilateral, that the contract was not void as against the statute of frauds and was not *ultra vires*. Judgment for plaintiff affirmed. *Farmers Union Warehouse Co.* v. *Hollis*, 69 S. E. 33.

Same—Holds for owner:—Goods in the possession of a warehouseman are legally in the possession of the owner. *Swift, Murphy & Co.* v. *McLemore,* 48 Ga. 63; *Zellner* v. *Mobley,* 84 Ga. 746; *Flournoy, Hatcher & Co.* v. *Wardlaw,* 67 Ga. 378.

Same—Prima facie case:—Where a bailment had been established, a refusal of delivery upon demand likewise shown, and the damage proven, the plaintiff had made his case and, uncontradicted, he was entitled to recover. *Nall* v. *Farmers Warehouse Co. et al.,* 95 Ga. 770.

Public weigher—Not required to weigh cotton in all cases:—Where an ordinance provided "It shall be the duty of said public weigher in all cases of disagreement between seller and buyer to weigh all cotton and other produce sold by weight, when requested so to do, and give his certificate for the same;" it was held this does not prohibit warehousemen from employing their own weighers and that it is only applicable in cases falling within the express terms of the ordinance. *City of Dawson* v. *Thornton,* 68 S. E. 73.

Goods deposited by agent—Where personally liable for storage charges—Election:—An agent, who had purchased cotton for his principal, stored the same with a warehouseman and did not disclose the fact that he was acting as an agent. On such a case, the warehouseman can hold the agent personally responsible for all storage charges. If the warehouseman afterwards elects to hold the principal he thereby releases the agent, but the mere fact that the warehouseman having presented his bill for charges to the agent and upon receiving a notification that the agent declines to pay, thereupon requests the attorney for the agent to forward the bill to the principal, this does not constitute such an election as will hold the principal and release the agent. *Garrard, Executor,* v. *Moody,* 48 Ga. 96.

Dispute as to title—When right to file interpleader exists:—A warehouseman sold goods deposited with him, pursuant to what he claims was an order, from his bailor, to sell. The purchaser of the cotton subsequently stores the same with the warehouseman, the original bailor denies having given the warehouseman power to sell, and claims the cotton as his own. *Held,* that the above facts are not such as to allow the warehouseman to file a bill of interpleader, compelling the original bailor and

the purchaser to litigate between themselves as to the title of the cotton. The facts do not present a case in which an interpleader will lie, for the reason that, if the warehouseman acted without proper authority in the sale of the cotton, he is liable in damages to the original bailor. If, under the facts in the given case, a party may be a wrongdoer against either of the claimants of the property, a bill of interpleader cannot be filed. *Tyus & Beall* v. *Rust, Survivor,* 37 Ga. 574.

Landlord's debt—Tenant's cotton cannot be taken:—A landlord, by inadvertence, deposited cotton belonging to his tenant with a warehouseman to whom the landlord was indebted; the warehouseman sought to apply the cotton to his debt. *Held,* that the tenant had a right of action for the cotton against the warehouseman. *Flournoy, Hatcher & Co.* v. *Wardlaw,* 67 Ga. 378.

Sale of goods while in warehouse—Best evidence:—Where goods have been sold while deposited in a warehouse and the purchaser thereof claims that the warehouse receipt was duly assigned to him, in an action, by said purchaser, against the warehouseman for the recovery of the goods, he must produce the receipt or else satisfactorily account for its non-production. The production of the warehouse receipt is the best evidence of title to the goods represented thereby. *Patten* v. *Baggs,* 43 Ga. 167.

Conversion—Sale on credit when instructed to sell for cash only, not a conversion:—Where an agent, who is in possession of goods belonging to his principal for the purpose of sale, sells the same on credit, it will not constitute a conversion although it be shown that under the agreement between them, the agent was authorized, to sell for cash only. *Loveless* v. *Fowler,* 79 Ga. 134.

Same—Refusal to deliver—Tender of charges unnecessary:—When the holder of a warehouse receipt makes demand upon a warehouseman for the property and the warehouseman states that the holder has no property in the warehouse; this is not only a refusal to deliver but an admission of conversion, because if the property was placed in the warehouse, as evidenced by the receipt, and the bailee could not account for it, this would amount to a conversion. When the warehouseman told plaintiff he had no cotton there, thus not only refusing delivery, but also de-

nying his right to make a demand, no further necessity for presentation of the receipt or offer to pay charges remained. *Lightsey* v. *Lee*, 8 Ga. App. 762.

Same—Delivery to one not owner constitutes:—The delivery of stored cotton to one not holding the warehouse receipt issued for the same and one whom the defendant knew not to be the owner of the cotton constitutes conversion. *Trippe* v. *Bell & Co.*, 78 S. E. 126.

Same—Elements of:—If the fact be that a defendant came into possession of warehouse receipts without the knowledge or consent of the owner, presented them at the warehouse, received the goods and disposed of the same without the authority of the owner, he is guilty of conversion, no matter how innocently he may have acted from a moral standpoint. *Farmers' and Merchants' Bank* v. *Bennett*, 120 Ga. 1012.

Taxable debt—Right to goods stored does not become such until demand and refusal:—Defendants had undertaken, by contract, to keep safely and deliver to the plaintiff on demand two bales of cotton. Two years elapsed before demand made; *held*, that under the provisions of the act of October 13, 1870, the plaintiff's right to the possession of this property did not become a taxable debt within the meaning of said act until he had demanded the cotton of the defendant and had met with a refusal to deliver. *Dawson* v. *Ivy & Garrard*, 45 Ga. 22.

Contract of lessee of warehouse acting in capacity of agent and in individual capacity—Individually liable to depositors:—Where in an action against several persons, doing business as warehousemen, the evidence showed that the plaintiff deposited several bales of cotton with them and, further, that the defendants had contracted in their capacity as a committee, for the purpose of running an alliance warehouse, and also individually. The contract of rental was executed not only in their representative but also in their personal capacity. A bailment was shown, refusal of the defendants to deliver the cotton upon demand and the plaintiff proved his damages. After such a showing the court granted a nonsuit. It was *held* that the plaintiff had established a *prima facie* case, that as the evidence was uncontradicted he was entitled to judgment. Therefore, the judgment of the court below was reversed. *Nall* v. *Farmers' Warehouse Co. et al.*, 95 Ga. 770.

Delivery—Wrongful where made to the owner's broker in the absence of express authority:—In an action against a railroad company, liable as a warehouseman, it appeared that it had tendered the goods to the consignee, who had refused to receive tendered the goods to the consignee, who had refused to receive them. The carrier's defense was that it had delivered the goods, pursuant to instructions given it by the plaintiff's broker, and that the consignee had directed defendant to consult with such broker. It was shown that it was a custom for carriers to follow the directions of consignee's brokers in case of refusal to receive goods. It was *held* that the defendant had violated its duty to the consignor in delivering the goods pursuant to instructions received from the plaintiff's broker, that the evidence failed to show any lawful excuse or justification for such delivery, and that ordinary diligence would have required the defendant to go, at least one step further, and obtain satisfactory evidence that the broker in reality had the authority to direct the delivery of the goods in behalf of the plaintiff. *American Sugar Refining Co.* v. *McGhee,* 96 Ga. 27.

Insufficient showing for appointment of Receiver for warehouseman:—There being no allegation that the defendant was insolvent, or had been guilty of any breach of duty relative to funds in its hands obtained from fire insurance and from the sale of goods damaged past identification, or that it had ceased to exercise its franchise or conduct its business, or that there was danger of loss of the property, the petition did not allege grounds sufficient for the granting of an inujnction or the appointment of a receiver. *Farmers' Ginnery & Mfg. Co.* v. *Thrasher,* 79 S. E. 474.

E.

Factors—Must act strictly within owners' instructions—Local custom cannot change law:—The plaintiffs, factors and cotton brokers, brought an action against the defendants on a promissory note and on money due on an account between them. The defendant pleaded payment of the note and recoupment as to the whole amount claimed. On the trial of the case, the defendants proved that they had shipped a large quantity of cotton to the plaintiffs with instructions to sell the same and to apply the proceeds thereof to the payment of the note sued on. And, further, that the sale had been made but not pursuant to the instruc-

tions of the defendant, and that the sum actually realized was nearly as great as the amount claimed by the plaintiffs, and that had plaintiffs followed the instructions of the defendants in regard to the sale, the amount realized therefrom would have been in excess of the sum claimed by the plaintiffs. The plaintiffs contended that as they had made advances on the cotton they were not bound to obey the instructions of the defendants in regard to the sale thereof and that this was a custom and usage in the city where the transaction took place. The court *held* that this contention could not be sustained, that it was the duty of the factor to strictly comply with the instructions of his principal and that it was error in the trial court not to instruct the jury, that if they believed that the cotton was shipped to the plaintiffs with the directions as alleged, and that if plaintiffs had sold the said cotton and it would have brought enough to pay off the note, that this was an extinguishment of the debt and the plaintiffs could not recover thereon. *Hatcher & Baldwin* v. *Corner & Co.*, 73 Ga. 418.

Same—Sale to recover advances—Effect of death of principal: —A factor, who has been intrusted with the possession of goods with directions to sell the same at such time as he thought best, has a right to sell a portion thereof in order to reimburse himself for advances made. The bailor's confidence being reposed in the factor, he may, in the absence of instructions, exercise his discretion according to the general usage of the trade; but in return, greater and more skillful diligence is required of him and the most active good faith. Where there has been no advances made, the power to sell is revocable at the pleasure of the owner, but not so where the factor has made advances, or incurred expenses in relation to the property, then the power of sale is irrevocable, as to the extent of such advances and expenses, and the factor has a lien on the goods for such sums. Therefore, where advances have been made, the power of sale to such an extent is not revoked by the death of the owner. *Willingham* v. *Rushing et al.*, 105 Ga. 72.

Same—Pledge by:—Where a factor, who was also a warehouseman and commission merchant, issued a receipt for cotton, intrusted to him for sale, to himself and in his own name, and pledged the same with a bank as security for a personal loan to

him, it was *held* that the bank, as pledgee, acquired no title as against a subsequent purchaser of the cotton who bought in good faith from the factor. *National Exchange Bank* v. *Graniteville Mfg. Co.*, 79 Ga. 22.

H.

Storage charges:—A warehouseman is not obliged to deliver goods until his storage charges are paid. *Tyns* v. *Rust*, 43 Ga. 529; *Dixon* v. *Central Ry. Co.*, 110 Ga. 173.

Same—Evidence:—Suit upon breach of contract for damages to apples while in cold storage. The evidence was sharply conflicting and jury found for defendant. Some evidence tended to show that the employees of defendant in the presence of plaintiff were told to be governed by the instructions of plaintiff as to the temperature of the room containing the property. *Held*, that the evidence was admissible as to the terms of the contract against all the joint plaintiffs, and did not amount to self-serving declarations. *McCullough Bros.* v. *Sawtell*, 68 S. E. 89.

Same—Cannot be changed by notice exhibited in warehouse subsequent to date of storage:—A warehouseman received cotton for storage when the rate was twenty-five (25) cents for the first month per bale and twelve and one-half (12½) cents for each subsequent month until the cotton was removed; afterward the warehouseman posted a notice in his warehouse, in which it was stated that the charge on all goods stored should be fifty (50) cents for the first month and twenty-five (25) cents for all following months. It was admitted by plaintiff that it was customary among warehousemen that no change in the charge of storage was ever made upon goods already stored; under this admission, it was *held* that the warehouseman could only recover charges at the rate prevailing at the time of storage. *Garmany* v. *Rust*, 35 Ga. 108.

Same—Special contract governs, when—Lien:—Plaintiff deposited certain cotton with defendants, taking warehouse receipts, upon an alleged express agreement regarding notice of the sale of the cotton. *Held*, that if defendant was entrusted with the possession, control and disposition of the cotton, for a commission, for the benefit of plaintiff, then defendant had a lien for all advances and expenses, and in the absence of a special contract could sell the cotton in accordance with the usage of trade.

That if there was a special contract then it would govern, though contrary to the general rule. *Whigham* v. *Fountain,* 132 Ga. 277.

Warehouseman's lien—Superior to claim for advances and charges:—Where it appeared that a warehouseman received cotton in his warehouse without notice of any lien or charge against the same, and it subsequently appeared that the cotton was produced on rented ground, the owner of which had an interest in such cotton, and further, that the seller of fertilizer also had a claim against the cotton, it was *held* that the lien of the warehouseman, for his lawful charges, was superior to any of the aforesaid advances and charges. *Clark & Cole* v. *Dobbins,* 52 Ga. 656; *Beall* v. *Butler,* 54 Ga. 43.

Same—Bailor personally liable for charges:—Any addition to a lien which a warehouseman has for his lawful charges for storage, the bailor is personally liable therefor. *Garrard, Executor,* v. *Moody,* 48 Ga. 96.

Factor's lien—Possession:—Possession of the property is necessary to create the factor's lien, but the possession may be actual or constructive. *Kollock* v. *Jackson,* 5 Ga. 153.

Same—Judgment paramount:—Judgments bind all the property owned by the defendant, from their date, as well that subsequently acquired as that owned at the time of signing the judgment; and the lien of judgments has precedence over, and is paramount to the lien of a factor upon property in his possession. *Id.*

Same—Same—Principal and agent—Set-off—Pleading:—A principal is liable to his factor for all commissions, expenses, advancements and disbursements, made or accruing in the course of the agency, on his account and for his benefit. And the factor has also a lien upon the goods in his hands, and their proceeds, if lawfully sold for cash, or the securities for which they were sold, if sold for credit, to secure to him such expenses, disbursements, advancements and commissions. Both the lien and the personal liability of the principal may be waived. The factor may detain the goods in satisfaction of his lien, or he may sue his principal for his commissions, disbursements and expenditures, and when himself sued by his principal, he may set them up in reduction of the plaintiff's demand, without pleading them as a set-off. But the liability of the principal goes upon the

ground that they were made and incurred in good faith, reasonably and without any default, on the part of the factor. *Brown, Shipley & Co.* v. *Clayton*, 12 Ga. 564.

K.

Garnishment of goods while in warehouse—Delivery of goods after service of summons—Warehouseman liable:—The storing of goods with a warehouseman is a contract of bailment, and the receipt is the mere evidence thereof. Where a warehouseman gives a receipt for goods stored by A, in which he promises to deliver the goods to A, or the bearer of the receipt, and is subsequently served with summons of garnishment by a creditor of A, *held*, that he is not relieved from liability, by the delivery of the goods to the holder of the receipt, to whom it was transferred after service of the garnishment. *Smith* v. *Picket*, 7 Ga. 104.

L.

Trover—Actual conversion must be shown—Sale on credit when cash sale only authorized—Demand:—The defendant was intrusted with certain goods belonging to the plaintiff for the purpose of cash sale. In an agreed statement of the facts in the case it was stated that the defendant sold part of the goods on credit. There was no evidence to show what part of the goods were sold, nor that there had been a demand made prior to action brought. *Held*, on the above stated facts, that there had been no conversion shown; that where one is intrusted with goods belonging to another for the purpose of selling the same for cash that a sale on credit will not constitute a conversion but is simply a breach of instructions. Title would pass to the purchaser in such a case and a sale which passes title is not a conversion, although it may be an abuse of authority. Trover will not lie in such case but the proper remedy of the plaintiff should have been an action on the case for violation of instructions or breach of contract. *Loveless* v. *Fowler*, 79 Ga. 134

Same—Pledgee of warehouse receipt may maintain trover:—Where one holds a warehouse receipt as pledgee and a warehouseman refuses to deliver the goods on demand, such pledgee may maintain the action of trover against the warehouseman, for he stands in the same privileged position as a *bona fide* pur-

chaser for value of the receipt. *Citizens Banking Co.* v. *Peacock & Carr,* 103 Ga. 171.

M.

Pledge—Delivery by warehouse receipt:—The delivery of a warehouse receipt, being the symbolical delivery of the property represented thereby, is sufficient to create a valid pledge of the property. *Citizens Banking Co.* v. *Peacock & Carr,* 103 Ga. 171.

Warehouseman's books—Best evidence as to weight of stored cotton:—Where cotton is weighed by warehousemen, and an account of the weight is rendered the depositor, their books and not his are the best evidence as to its weight. *Cloud & Shackelford* v. *Hartridge & Hartridge, Admrs.,* 28 Ga. 272.

N.

Loss by fire—Warehouseman not responsible:—A warehouseman is not responsible for goods destroyed by fire unless negligence be shown upon his part. *Brunswick Grocery Co.* v. *Brunswick & Western R. R. Co.,* 6 Ga. 270.

Negligence—Duty to protect property—Burden of proof:—A railroad company demanding storage charges for warehousing goods is a bailee for hire, and proof of the loss of the goods places upon it the burden of showing that it had exercised ordinary care and diligence in protecting them. Negligence may consist in the bailee having left the property unguarded, where it would be exposed to a danger from fire which an ordinarily prudent person would have anticipated under all the circumstances. *Netzow Mfg. Co.* v. *Southern Ry. Co.,* 66 S. E. 399.

Same—Evidence:—Property on storage in warehouse located between the tracks of defendant's railway and another railway company, the warehouse being managed by defendant railway company, was destroyed by fire communicated to the warehouse, and originating in a quantity of cotton stored on the platform of the warehouse. This platform had neither sides nor overhead covering. *Held,* that proof that other fires had recently originated in the cotton on the platform was a circumstance which plaintiff might properly present to the jury in connection with other facts, and that the jury might determine whether the defendant's cautionary activities had fulfilled the required measure of ordinary care and diligence. *Netzow Mfg. Co.* v. *Southern Ry. Co.,* 66 S. E. 399.

Act of war—Not trespass:—Where an officer in the Confederate Army received property and removed it to prevent it from falling in the hands of the Union forces, it was *held* that this was not trespass, that cotton was contraband of war; and further, that a clerk of the warehouseman who received such property, after its removal and placed the same in his employer's warehouse, was not liable for the conversion thereof. *Stafford* v. *Mercer*, 42 Ga. 556.

Same—Charges to jury—Ordinary care—Measure of damages:—Where cotton was thrown out of defendant's warehouse by the Confederate forces, in order that such warehouse might be used as a hospital, and where the evidence showed that both the plaintiff, who was the owner of the cotton, and defendant had seen the cotton so thrown out, it was error on the part of the court to rest its charges to the jury simply on the fact that it was the duty of the warehouseman to recover possession thereof, if he could do so by the exercise of ordinary care and prudence; the court should have further charged that if it appeared to the satisfaction of the jury that plaintiff might have protected his cotton by the exercise of such care, it was his duty to do so, and the attention of the jury should have been called to the fact, that, owing to the state of war then existing, both parties were to all intents and purposes under duress. *Smith & Oneal* v. *Frost*, 51, Ga. 336.

Loss of weight—Burden of proof:—Where it is shown that properties stored with a warehouseman have decreased in weight since the same were received by him, the plaintiff must not only show this fact but it must further show that such loss resulted from the negligence and want of proper care on the part of the warehouseman. *Cunningham* v. *Franklin, Read & Co.*, 48 Ga. 531.

M.

Negligence—Instruction to jury—Pleading and evidence:—In an action for damage to fruit caused by alleged negligence of the warehouseman, plaintiff is not entitled to have the jury instructed so as to give him the benefit of a theory of recovery which he did not plead or undertake to prove. *Western & Atlantic R. R. Co.* v. *Branan*, 123 Ga. 692, 695.

Measure of damages—Interest allowed from date of demand:—Where a warehouseman was sued for the conversion of cotton

deposited with him and it was alleged that he failed to redeliver the same upon demand, the court charged the jury, among other things, that if it found for the plaintiff, its verdict should be for the value of the cotton with interest from the time of demand and that the principal and interest together would be the amount of damages. *Held*, that this was a proper charge. *Garrard* v. *Dawson*, 49 Ga. 434.

P.

Insurance—Cost of removing debris—Equitable lien—Bailor's right of removal:—A warehouseman had a large quantity of rice stored which was insured in various fire insurance companies by the several owners thereof. The warehouse was burned and a large quantity of the rice ruined. Representatives of the insurance companies, without permission from the warehouseman, removed all the salable rice remaining after the fire and disposed of the same in accordance with the terms of the policies. A large quantity of ruined rice remained on the premises and the warehouseman was obliged to remove the same pursuant to an order of the health authorities of the city. In an action by the warehouseman against the agent of the several insurance companies who held the proceeds of the sale, the former contended that he had an equitable lien on such proceeds for the expense which he had been put to in removing the rice from his premises. The court *held* that this contention could not be sustained, that a warehouseman's lien extended only to the goods of his customer for storage charges that had accrued upon them, and that the court would not extend an equitable lien for his disbursements in such a case. The court *further held* that a depositor had, at all times the right to go upon the premises of the warehouseman to remove his property therefrom, and that if the property was partially injured that the owner would have a right to remove the uninjured portion, but that he could not be compelled to remove that which was ruined. That if the warehouseman was put to expense in removing such useless property, the expense must be borne by him as it is one of the incidents of the business of warehousemen. *Savannah Steam Rice Mill Co.* v. *Hull*, 103 Ga. 831.

Same—Contract to keep insured in customer's name:—The plaintiff brought an action against the defendant warehouseman, alleging that he had stored a large quantity of cotton in the

warehouse of the latter, and that under a contract between them it was agreed that the defendant was to keep the cotton insured in the name of the plaintiff. The cotton was to be designated in the policy of insurance by certain marks made on the several bales. After several months the plaintiff removed the cotton from the warehouse of the defendant and settled his account with him on the basis that the insurance had been placed in the manner specified in the contract. It subsequently came to the knowledge of the plaintiff that the warehouseman had not insured the cotton in the manner set forth in the contract, but that the cotton had been insured under the defendant's general policies of insurance covering all the cotton in the warehouse of the defendant. The depositor thereupon brought this action to recover the amount of insurance with which he was charged. It was *held* that he was entitled to so recover, the jury having found that as a matter of fact the defendant had failed to comply with his contract with the plaintiff. *Henderson Warehouse Co.* v. *Brand*, 105 Ga. 217.

Same—Contract to insure—Statement in warehouse receipt as to insurance does not constitute such contract:—The defendant warehouse company issued to the plaintiff a receipt for cotton stored in which it was stated, "All cotton stored with us fully insured." The defendants were charged, first, with the loss of the cotton in that the fire which destroyed the same was the result of their negligence and, by an amendment to the declaration, with a liability under the contract by which they agreed to keep the cotton insured; and that the statement in the warehouse receipt was evidence of such contract. On motion of the defendant at the trial, that part of the declaration in regard to the contract to keep the cotton insured was stricken out and the jury was left to consider the question as to whether or not the defendant had been guilty of negligence in the loss of the cotton. It was *held* that the mere statement that "All cotton stored with us fully insured" is not sufficient to constitute a contract to insure, and that although these words might be misleading and productive of damage, they were not sufficient to constitute such a contract. The jury found that the defendant had exercised due care and that it was not responsible for the loss of the cotton resulting from the fire. The judgment given for the defendant was, therefore affirmed on appeal. *Zorn* v. *Hannah & Co.*, 106 Ga. 61.

Same—Same—Statement in receipt:—Action for value of cotton. The warehouse receipt contained the following clause: "All cotton stored with us is fully insured. Acts of Providence excepted." On motion, the court struck out all the averments of the petition seeking to charge the defendants with liability on account of the statement in the warehouse receipt. Held no error on authority of *Zora* v. *Hannah*, 106 Ga. 61. Plaintiff sought to amend his petition, first, by alleging a conversation, which, together with the statement in the warehouse receipt, left him under the impression his cotton was to be insured by defendant; that the said statement in the receipt was false and fraudulent and intended to deceive and did deceive him to his injury; second, by alleging that the conversation and statement in the receipt constituted an express contract to insure. The amendments were properly disallowed, as they sought to set up new and distinct causes of action and that it was by no means clear that the facts alleged in either amendment constituted a cause of action. *Atwater* v. *Hannah & Co.*, 116 Ga. 745.

Same—Right to proceeds—Where some goods insured and others not—Where identification impossible:—If the warehouseman insures goods for his customers, and collects money for their loss, he holds such funds for the benefit of the insured customers. If at the time of the fire some of the goods are insured and some are not and some of the goods are so damaged they cannot be identified and if when in such condition they are sold by the warehouseman the fund thus derived will be held by the warehouseman for the benefit of all the owners of the goods whether they be included among the insured or uninsured class. *Farmers' Ginnery & Mfg. Co.* v. *Thrasher*, 79 S. E. 474.

Same — Same — Same — Suit in equity — Multifariousness — Parties plaintiff:—Where two funds were raised in the manner indicated above but were insufficient to cover the losses of all the parties in interest, and equitable suit at the instance of a number of the customers, of whom there were a large number, suing in behalf of themselves and others similarly situated, against the warehouseman for an accounting, was not subject to demurrer on the ground that it was multifarious, or that there was a misjoinder of parties plaintiff. *Id.*

Same—Same—Same—Pleading:—In a suit of the character above stated it appeared from the allegations of the petition that

the duty to insure covered a period only of 30 days, beginning on the date of the storage of the goods, *held,* it was erroneous to overrule a special demurrer complaining that the petition failed to allege the several dates upon which the goods were stored. *Id.*

Same—Same—When warehouse receipts not relied upon need not be set forth in petition—Pleading:—In the case above described where the case was not founded upon the receipts, the petition is not demurrable because it failed to set forth the receipt in form or substance. *Id.*

Same—Parol contract to obtain—Name of agent of corporation making, need not be alleged:—In such an action against a corporation based upon an alleged parol contract to procure insurance on the stored goods, the petition was not subject to special demurrer upon the ground that it failed to allege the name of the agent of the corporation who made the contract. *Id.*

Same—Evidence of custom:—Evidence that it was the custom of those depositing goods in warehouses to insure them was properly received. *Hamilton & Co.* v. *Moore,* 94 Ga. 707.

Q.

Same—Custom for warehousemen to insure—Liable for failure:—Where it was shown a universal custom obtained for warehousemen to procure insurance against fire for cotton stored with them a failure to so insure renders a warehouseman liable in case of destruction by fire. This is true even though the warehouse receipt contain the provision "Acts of fire and Providence excepted." Being a receipt it is subject to explanation by parol evidence. *Rochelle Gin & Cotton Co.* v. *Fisher,* 79 S. E. 584; see also, *Farmers' Ginnery & Mfg. Co.* v. *Thrasher,* 79 S. E. 474.

Warehouse Receipts—Advances must be stated on:—It is the duty of a warehouseman when he issues a receipt, if he has made an advance to the owner of the goods, to so state in the body of the receipt. If he subsequently makes an advance he should require the production of the receipt and enter thereon a statement of the advance. If advances have been made it should specifically appear upon the receipt, if not so stated the pledgee is protected. After the pledgee obtains possession his title cannot be encumbered by any act of the warehouseman or pledgor. The words "customary charges and all advances" held not sufficient as notice. *Bank of Sparta* v. *Butts,* 61 S. E. 298, 300.

Same—Negotiability:—The transfer and delivery of a warehouse receipt is equivalent to the delivery of the property itself. *Citizens Banking Co.* v. *Peacock & Carr,* 103 Ga. 171; *Gibson* v. *Stern,* 8 How. (U. S.) 383.

Same—Delivery passes title to the property—Warehouseman's duty to deliver:—Warehouse receipts are mere symbols of the property itself and a delivery of the receipt is equivalent to constructive delivery of the property described in the receipts, and requires the warehousemen upon their presentation and payment of storage charges and advances, if any, to make actual delivery to whoever might hold them. *Lightsey* v. *Lee,* 8 Ga. App. 762.

Same—Case where bailor protected when warehouse receipt fraudulently negotiated:—Where the owner of goods delivers them to his agent to deposit the same in a warehouse and the agent accordingly does so, but takes a receipt therefor in his own name and negotiates the same, it was *held* that the title of the owner to the goods was not impaired by the fraudulent negotiation of the receipt. *Richardson & Martin* v. *Smith,* 33 Ga. Supp. 95.

Same—Delivery by—Essentials of sale:—The plaintiff contracted with a manufacturer, who was also conducting a warehouse, that the latter should manufacture certain articles of commerce, and, when completed, that the goods should be stored in the warehouse belonging to the manufacturer. It was the custom between them that when the goods were stored the purchaser would honor a draft drawn by the manufacturer, to which draft were attached warehouse receipts showing that the goods had been deposited and stored in the warehouse. On the occasion out of which this suit grew, the manufacturer had issued the usual receipt and drawn his draft on the plaintiff, but the goods represented thereby were still in the factory and had not been delivered to the warehouse. After the plaintiff had paid the draft and before he had withdrawn the goods, a receiver was appointed for the manufacturer who took possession of the goods represented by this receipt, which goods were found in the factory and not in the warehouse. At the trial the court adjudged that no title had passed by the transfer of this receipt to the plaintiff and that, therefore, he was not entitled to recover. The case was reversed on appeal holding that the essentials of a valid sale

had been complied with and the title had been passed to the plaintiff. That the issuing and transferring of a warehouse receipt was a well recognized and common mode of effecting delivery, and, in this case, was undoubtedly intended to operate as such. Having received the price of the goods, the manufacturer would be estopped from denying the fact of delivery to his warehouse. *Shepard & Co.* v. *King*, 96 Ga. 81.

Same—Effect of transfer:—The transfer of warehouse receipts and other similar paper, symbolic of property, operates to transfer the title to the property when it is so intended; but it gives the holder of the receipt no higher rights than if the property itself had been physically transferred, sold or delivered. *Booze* v. *Neal*, 64 S. E. 1104.

Same—Indorsement by one since deceased—Title—Evidence:—A person, since deceased, had indorsed a warehouse receipt to another, the purpose of such indorsement was not stated. In an action, by the executor, for the recovery of the goods represented by the receipt, parol evidence will be received, which will explain that such indorsement was not for the purpose of passing the title to the goods but simply to enable the assignee to act as agent for the indorser to obtain the cotton represented by the receipt. *Lowery v. Davidson*, 44 Ga. 38.

Same—Pledge proves title:—When warehouse receipts for cotton or other goods are delivered in pledge as collateral security for the payment of a debt, the legal effect of such delivery is to put the legal title to the property pledged and described in such receipt in the pledgee. The title to property represented becomes vested in the bona fide pledgee for value, and this title cannot be defeated or encumbered by any act of the warehouseman or pledgor. The pledgee has not only a lien for his advance on the property represented, but an absolute title indefeasible except by payment of the debt. *Bank of Sparta* v. *Butts*, 61 S. E. 298.

Same—Collateral security—Without indorsement—Intention of parties—Burden of proof:—Where a receipt, issued by a warehouseman, was transferred by the person to whom the same was issued and pledged as collateral security, for the payment of a loan, but not indorsed to the pledgee, it was *held* that the property passed to the pledgee by such symbolical delivery. Under the code in force in the state of Georgia, a pledgee of such a re-

ceipt is such a *bona fide* holder of the property as will be protected under the same circumstances as a purchaser. *Further,* that if the parties so intend, the delivery of a warehouse receipt without indorsement, as collateral security, transfers both title and possession to the property represented by the receipt. Where the warehouseman claims that the pledgee has received the proceeds of the warehouse receipt, the burden of proof is on him to show that fact in the trial of the action for the recovery of the property. *Citizens Banking Co.* v. *Peacock & Carr,* 103 Ga. 171.

Same—Pledge—Must have possession of goods:—In order to constitute a valid pledge of property to secure a debt, there must be a delivery, either actual or constructive, of the property to the intended pledgee. Consequently, the delivery, as collateral security for a promissory note, of a paper purporting to be a wharfinger's receipt for the property therein described conveys to the intended pledgee no interest whatever in such property, when the same is not in the possession of the wharfinger or the party who undertakes to pledge it. *Commercial Bank of Jacksonville* v. *Flowers,* 116 Ga. 219.

Same—Property not actually in store—Authority of superintendent to issue—Bona fide holder:—The superintendent of the defendant warehouse company issued negotiable warehouse receipts, of a special form, when the property represented thereby was not actually in store. It was *held* that in the absence of statutory provisions, warehouse receipts and bills of lading are mere symbols of the property which they represent, and that a pledgee for value or other *bona fide* holder occupies no better position than the original bailor. *Further,* that if warehouse receipts of a special form and character "be adopted and issued in due course of business, for the express purpose of being pledged as security to obtain money, and if, as a part of the regular system of using them, the warehouseman acknowledged in writing on each receipt notice of assignment by the pledgor to the pledgee before the latter advances his money thereon, the pledgee, after advancing his money in good faith, is entitled to stand in the terms of the pledged receipt as importing a genuine business transaction of the nature described in the instrument. Thus, though in fact no goods had been received for storage, the recital in the special receipt being utterly false, nevertheless the recital will have the same effect in protecting such *bona fide* pledgee as

if the goods had been received and stored." And, therefore, the warehouseman was liable for their value. The court holding that he who creates a symbol, is bound by it only in its symbolical character; but he who creates a symbol and aids in raising it to a security, is bound by it both as a symbol and security. *Planters Rice Mill Co.* v. *Merchants Nat. Bank of Savannah,* 78 Ga. 574; *Planters Rice Mill Co.* v. *Olmstead & Co.,* 78 Ga. 586.

Same—Same—Pledged by warehouseman as factor to secure personal loan—Bona fide purchaser of goods protected:—Where one, who was a warehouseman and who also acted in the capacity of factor and cotton broker, issued a warehouse receipt in his own name for cotton stored with him as factor, and pledged the same with a bank as security for a personal loan to him; it was *held* that no title passed to the bank as against an innocent purchaser of the cotton itself. *National Exchange Bank* v. *Graniteville Mfg. Co.,* 79 Ga. 22; *Western & A. R. R. Co.* v. *Ohio Valley B. & T. Co.,* 107 Ga. 512.

Same—Same—To secure note at usurious rate—Title of such pledgee good as against warehouseman:—The owner of certain bales of cotton delivered them to the defendant warehouseman and received his warehouse receipt. Such receipt was assigned to the plaintiff, in order to secure the payment of a note which bore interest at a usurious rate. In an action of trover against the warehouseman, these facts were shown at the trial and, further, that there had been a demand made by the plaintiff and a refusal to deliver by the defendant warehouseman. On motion of the defendant the plaintiff was nonsuited. It was *held* on appeal that the defendant warehouseman, who was a stranger to the usurious transaction, could not set up usury as a defense in the action for the recovery of the property. *Zellner* v. *Mobley,* 84 Ga. 746.

Same—Refusal to deliver goods unless receipt surrendered—Not conversion:—In an action, brought by the assignee of a warehouse receipt, against the warehouseman for conversion of the goods, conversion cannot be shown by the mere fact that the warehouseman refused to deliver the goods when demanded of him, he claiming that the warehouse receipt should be delivered to him before he surrenders the goods or that he be given a bond indemnifying him against misdelivery. *Patten* v. *Baggs,* 43 Ga. 167.

Same—Worthless receipt—Purchaser may recover from seller:—Plaintiff purchased from defendant a warehouse receipt representing certain cotton. Prior thereto, but unknown to both parties, the cotton represented had been delivered to another party on presentation of a duplicate receipt. The warehouseman refused to deliver the cotton, and the holder of the receipt brings his suit for the amount paid against the party from whom he purchased the receipt. *Held*, that plaintiff is not limited to his action against the warehouseman, but is entitled to rescind the contract, tender back the receipt, and recover from defendant the amount of the purchase price. *Livingston* v. *Anderson*, 58 S. E. 505.

Same—Lost receipt—Warehouseman compelled to deliver goods—Equity jurisdiction. A bill in equity was filed against warehousemen to compel them to deliver certain goods stored with them upon filing a bond to indemnify the warehousemen, it being alleged in the bill that the warehouse receipts had been lost or destroyed; upon demurrer to such bill it was *held* that the court had jurisdiction to compel defendants to deliver the goods and that the demurrer was properly overruled, the more especially since it appeared that, if the bill had been dismissed for want of jurisdiction, the complainant's remedy, in the common-law courts, might have been barred by the statutes of limitations. *Hardeman & Sparks* v. *Battersby*, 53 Ga. 36.

Same—Evidence—Parol testimony—Admission:—While it is true that usually the possession of property is the best evidence of title, it is also true that, where personal property sold is represented by warehouse receipts, the receipt itself is the best evidence of title. Further, that where a warehouseman declined to surrender property, which he had stored, to one who represented himself as the owner thereof, stating to such third person that he did not doubt that he was the true owner but that he must have his receipt, such action cannot be construed as an admission that the warehouseman regarded such third person as his bailor. It was at the most that the third person seemed to be the owner but that his title was defective. *Patten* v. *Baggs*, 43 Ga. 167.

Same—"Acts of fire and Providence excepted" in receipt will not relieve warehouseman where universal custom of warehousemen to insure against fire—Parol evidence:—In an action against

a warehouseman to recover the value of cotton destroyed by fire it was held that the stipulation in the warehouse receipt that the cotton was "subject to the presentation of this receipt only, the paying of customary expenses and advances, acts of fire and Providence excepted" was subject to explanation and was controlled by the proof of a custom universally recognized in the locality, and which consequently became a part of the contract, by virtue of which the defendant warehouseman undertook to insure all cotton deposited in its warehouse and upon its failure to so insure and the destruction of the cotton by fire the defendant became liable for the value thereof. That the warehouse receipt, as a receipt, was subject to explanation by parol evidence. *Rochelle Gin & Cotton Co.* v. *Fisher,* 79 S. E. 584; see also, *Farmers' Ginnery & Mfg. Co.* v. *Thrasher,* 79 S. E. 474.

Same—Subject of larceny:—A warehouse receipt representing a bale of cotton, showing on its face a deposit of the cotton and identifying the cotton, given by the warehouseman, to the owner of the cotton, is property and is a subject matter of larceny. *Currie* v. *State,* 59 S. E. 926.

R.

Bill of lading—Delivery by carrier of the goods represented without return of the bill of lading:—A common carrier, which had issued a bill of lading for a quantity of flour intrusted to it for shipment, subsequently delivered the flour without procuring the return of the bill of lading. It appeared that the consignor had consigned the goods subject to his own order, and that he had drawn a draft on a third person and had delivered the bill of lading as security for the payment of this draft. *Held,* that the carrier was liable on the bill of lading. *Boatmen's Saving Bank* v. *Western & Atlantic R. R. Co.,* 81 Ga. 221; *Western & A. R. R. Co.* v. *Ohio Valley B. & T. Co.,* 107 Ga. 512; *Coker & Co.* v. *First Nat. Bank of Memphis,* 112 Ga. 71.

Same—Same—Waiver:—The plaintiff sold a carload of shingles to a purchaser and instructed the railroad company not to deliver the same without production of the bill of lading. After the shipment was made, plaintiff learned that the defendant railroad company had, contrary to the terms of its agreement, delivered the shingles to the purchaser without requiring the surrender of the bill of lading. The plaintiff thereupon drew his draft at thirty days, and although such draft was not paid.

it was *held*, in an action against the carrier, that the plaintiff had waived his right as to the surrender of the bill of lading on delivery by the drawing of the draft, this being equivalent to the acceptance of a thirty days' credit; further, that the title to the shingles had passed to the purchaser. *Southern Ry. Co.* v. *Kinchen & Co.*, 103 Ga. 186.

Same—Exemptions in—Contrary to code—Effect of acceptance:—The defendant carrier had issued a bill of lading which contained provisions that it would not be responsible for the loss or damage to goods incurred when on other and connecting lines or railroad, and that in no case would it be liable for damage unless a written demand be made therefor within ten days after delivery of the goods. It was *held* that both of these attempted exemptions were contrary to section 2068 of the code, that it was an attempt to limit the legal liabilities of the carrier and that this could not be done without effectual proof that the shipper had assented thereto; that the mere acceptance of a bill of lading does not establish the shipper's assent to stipulations of this kind. *Central R. R. Co.* v. *Hasselkus & Stewart*, 91 Ga. 382.

Same—Indorsement thereon by agent as to condition of the goods when received not admissible in evidence:—A bill of lading with indorsement thereon by freight agent of the defendant, to the effect that certain corn was received in good order by the road by which he was employed, is not admissible in evidence unless it be further shown that it was the duty of this agent to investigate the condition in which freight was received and report that fact on bills of lading. *Evans & Ragland* v. *Atlanta & West Point R. R. Co.*, 56 Ga. 498.

Same—Indorsement:—Where a bill of lading for flour had not been indorsed to plaintiff, he cannot maintain an action thereon. *Haas* v. *Kansas City, F. S. & G. R. R. Co.*, 81 Ga. 792.

Same—Same—Effect:—An indorsement on a bill of lading by the consignor, to a third person, in effect makes such third person the consignee. *Chicago Packing & Provision Co.* v. *The Railroad*, 103 Ga. 140.

Same—Not a "negotiable instrument:"—Although a bill of lading be indorsed and transferred it is not such a negotiable instrument as will give the assignee any greater rights than the assignor had. *Id.*

Same—Same—Stands for the property it represents:—Under the common law, bills of lading are not, properly speaking, negotiable instruments. The mere possession of bills of lading, in an apparently regular state and under circumstances apparently honest, does not always enable the holder to negotiate with full protection to a *bona fide* purchaser. If they are stolen or procured from the owner by fraud or trusted to an agent for mere custody and safe-keeping, they occupy much the same, if not exactly the same, position that the property itself would occupy if it were dealt with instead of the bills which represent it. *Tison & Gordon* v. *Howard*, 57 Ga. 410; *Raleigh & Gaston R. R. Co. et al.* v. *Lowe*, 101 Ga. 320.

Bills of lading—Notice necessary to defeat:—Owing to the importance of bills of lading and similar instruments in the commercial transactions of the day, the court *held* that the rights of purchasers thereof would be protected and would not be defeated unless there be notice or clear evidence of such notice; *further*, that mere presumption would not suffice. *Boatmen's Savings Bank* v. *Western & Atlantic R. R. Co.*, 81 Ga. 221.

Same—Parol evidence not receivable to show time of delivery—Reasonable time:—The plaintiffs proved by a bill of lading a written contract on the part of the defendant carrier to carry and deliver certain goods. It did not appear from the bill of lading that any definite time was therein stated in which delivery must be made. It was *held* that there was an implied condition in such contract that the goods would be delivered within a reasonable time and that parol evidence would not be received to show that it was the understanding of the parties that the goods were to be delivered within a certain understood time; *further*, that the bill of lading must be looked at as the final depository and sole evidence of the contract of the carrier. *Central R. R. Co.* v. *Hasselkus & Stewart*, 91 Ga. 382; *Richmond & Danville R. R. Co.* v. *Shomo*, 90 Ga. 496, distinguishing *Purcell* v. *Southern Ex. Co.*, 34 Ga. 315. See also *McElveen & Hardage* v. *Southern Ry. Co.*, 109 Ga. 249.

S.

Custom—When universal, becomes part of storage contract, although contrary to terms of receipt:—Where it was shown the custom of warehousemen to insure stored cotton was universal in the locality, it was held, the warehouseman was liable for the

value of burned cotton where he failed to insure. A stipulation in the warehouse receipt "Acts of fire and Providence excepted" was held to be controlled by the aforesaid custom. *Rochelle Gin & Cotton Co.* v. *Fisher*, 79 S. E. 584.

T.

Larceny by employee—Employee not in possession as bailee—Not larceny after a trust:—Where the employee of a warehouseman stole cotton from him, it was *held* (the value of the cotton being found to be less than fifty dollars) that the crime commited was one of larceny; that the property was in the possession of the warehouseman and not of the defendant, and, therefore, that no trust was reposed in the defendant from which such a fraudulent conversion could be shown as would subject him to indictment for larceny after a trust. *Wall* v. *State of Georgia*, 75 Ga. 474.

U.

Taxation—State may classify occupations and tax same:—A state has the right to classify occupations and to place different taxes upon different occupations. The necessity for such tax, upon what occupation it shall be imposed, and the amount are exclusively within the control of the legislature. So long as there is no discrimination against citizens of other states, the amount and necessity of the tax is not open to criticism by the courts. A tax upon "all agents of packing houses doing business in this state" held valid. *Kehrer* v. *Stewart*, 197 U. S. 60, 69, 70; affirming 115 Ga. 184.

CHAPTER XII

IDAHO

LAWS PERTAINING TO WAREHOUSEMEN

The State Grain Commission consists of three (3) qualified electors of the state of Idaho, who are appointed by the governor to hold office for two (2) years and until their successors are appointed and qualified, unless sooner removed by the governor. The commissioners shall be appointed each odd-numbered year. Said commissioners shall take the oath of office required of other state officers. Two members of said commission shall be farmers actually engaged in the business of farming, and not engaged in the warehouse business at the time of their appointment, and shall be selected from different sections of the state. The decisions of a majority of the commissioners shall be deemed the decision of the commission on all questions arising for their consideration. Revised Codes, Idaho, 1908, sec. 1478, as amended by Act March 5, 1909. Sess. laws, 1909, p. 28.

The board shall select one of its members as chairman of said commission, and before the first day of July of each year said commission shall be called together by the chairman at some place within the state, and shall then and there establish standard grades of all hay and grain bought or handled by any public warehouse within the state which shall be known as the "Idaho Grade." The said commission shall exercise general supervision over the hay and grain interests of the state, and of the handling, inspection, weighing and storage of hay and grain, and of the management of public warehouses, shall investigate all complaints or fraud or injustice in the hay and grain trade, and may fix the charges of public warehousemen.

The said commission shall also establish the necessary rules and regulations for grading and weighing hay and grain, and shall fix the charges for inspecting and grading hay and grain, and shall make such other rules and regulations as may be necessary for the enforcing of the rules and regulations of this chap-

ter or any law of this state in regard to the same. Revised Codes, Idaho, 1908, sec. 1479, as amended by Act March 5, 1909. Sess. laws, 1909, pp. 28, 29.

For the purpose of maintaining the grades of wheat in this state, it shall be the duty of the chairman to procure from every part of the state of Idaho, each season, as soon as it can be done after harvest, samples of the crop of grains, and after collecting such samples of grain he shall call a meeting of the State Grain Commission, and they shall make up and establish from said samples the said grade, which shall be a fair average mixture of all the varieties of grain in the different sections of the state. If the said State Grain Commission deems it expedient they may, in making up and establishing the said grade, meet and confer with like grain authorities in the states of Oregon and Washington, or, in case there are no such authorities in the states of Oregon and Washington, then with the representatives of the leading handlers of grain in the cities of Portland, Oregon, and Tacoma, Washington, and make up and establish the same fair average quality, which shall be maintained in this state. This section shall not be so construed as to interfere with the standard grades of grain elsewhere provided for in this chapter. Revised Codes, Idaho, 1908, sec. 1480.

That said standard grades, charges, rules and regulations so made and established shall be published in three (3) newspapers, printed and published in different sections of the state of Idaho, for a period of two (2) weeks, beginning immediately after they are made or established, and it shall be the duty of every warehouseman within this state to apply to and receive of the chairman a placard copy of said standard grades, charges, rules and regulations, which he shall keep posted in a conspicuous place in his office and which the chairman shall furnish free of cost. Said commission may modify such grades, rules and regulations or establish new ones, and such changes shall be advertised as required for the original. Revised Codes, Idaho, 1908, sec. 1481, as amended by Act March 5, 1909. Sess. Laws, 1909, p. 29.

It shall be the duty of the commission to furnish any elevator or warehouse in this state or adjoining states, standard samples of grain as established by the State Grain Commission when requested to do so by the proprietor, lessee or manager thereof, at the actual cost of such sample. It shall be the duty of the com-

mission to advertise the cost to the warehousemen of the said standard samples of grain, at the time the said standard grades, charges, rules and regulations are advertised as herein provided. Revised Codes, Idaho, 1908, sec. 1482.

Such commission shall appoint a state hay and grain inspector, whose term of office shall be for two (2) years, and unless sooner revoked by the commission. Such inspector shall give a bond to the state in the sum of ten thousand dollars ($10,000), with sureties to be approved by the commission, conditioned for the faithful and impartial discharge of the duties of his office according to the law and rules and regulations prescribed by the commission and the payment of all damages sustained by any person caused by his failure to perform such duties. He shall be paid a salary of one thousand five hundred dollars ($1,500) per annum, payable quarterly, and his actual, necessary expenses while away from his place of residence on business for the State Grain Commission. He shall file with said commission duplicate vouchers of all such expense duly verified by him. Revised Codes, Idaho, 1908, sec. 1482a, as added by Act March 5, 1909, Sess. laws, 1909, p. 30.

Upon written complaint filed with the commission charging the state hay and grain inspector with official misconduct, inefficiency, incompetency or neglect of duty, the commission shall investigate such charge, and if it be sustained, shall remove such officer. Revised Codes, Idaho, 1908, sec. 1482b, as added by Act March 5, 1909. Sess. laws, 1909, pp. 30-31.

All elevators and warehouses in which hay, grain, wool or other product is received, stored, shipped or handled, situated on the right of way of any railroad company or adjacent thereto, to be used in connection with this line of railway at any station or siding, shall be public warehouses and shall be under the supervision and subject to the inspection of the commission: *Provided,* That private warehouses and elevators used solely and absolutely for private storage purposes by the owner or owners thereof, are not included in this Act. Revised Codes, Idaho, 1908, sec. 1482c, as added by Act March 5, 1909. Sess. laws, 1909, p. 31.

All such public elevators, warehouses and prospective purchasers shall be licensed annually by the commission. Applications for such license shall be made before transacting ware-

house business. Every license issued shall expire on the thirtieth day of June the following year. The fee for said license shall be five dollars ($5.00) for each and every warehouse so operated and for each and every prospective purchaser. Such license shall be revoked by the commission for cause upon notice and hearing. Revised Codes, Idaho, 1908, sec. 1482d, as added by Act March 5, 1909, Sess.laws, 1909, p. 31, and amended by Act March 7, 1911. Sess. laws, 1911, p. 109.

Any person, company or corporation operating such warehouse without license shall forfeit to the state for each day's operation, fifty dollars ($50.00), and such operation may be enjoined by the district court upon complaint of the commission. Revised Codes, Idaho, 1908, sec. 1482e, as added by Act March 5, 1909, Sess. laws, 1909, p. 31.

Every public warehouseman shall receive for storage and shipment, so far as the capacity of his warehouse or warehouses will permit, all grain, hay, wool, or other products in suitable condition for storage tendered him in the usual course of business without discrimination of any kind. At the request of the owner or consignee, such warehouseman shall store any grain, hay or other product of the same grade and of the same owner or consignee in a separate pile, which shall thereupon be marked and known as a special pile.

If a warehouse receipt be issued for such hay, grain, wool or other product, it shall state that it is separately stored, and shall give the number of the pile, and number of sacks, name of product and kind, and gross number of pounds. The warehouseman, agent or superintendent shall place upon or cause to be placed upon the grain or other product, printed on the sacks or other sign board in large legible letters, plainly visible from the aisle, the owner's name and pile number. Revised Codes, Idaho, 1908, sec. 1482f, as added by Act March 5, 1909. Sess. Laws, 1909, p. 31 and amended by Act March 7, 1911, Sess. Laws, 1911, pp. 109, 110.

Every person having an interest in any hay, grain, wool or other product stored in any such warehouse, the state hay and grain inspector, and any legally licensed prospective purchaser shall have the right to examine at all times during business hours, any hay, grain, wool or other products so stored, and all parts of such warehouses; and every such warehouseman, his agent

or servants, shall furnish proper facilities for such examination, and samples of grain; when requested by the inspector or legally licensed prospective purchaser; *Provided;* If the words "not for sale" be posted on said pile, such pile shall not be examined or samples taken therefrom. Revised Codes, Idaho, 1908, sec. 1482g, as added by Act March 5, 1909. Sess. Laws, 1909, p. 31 and amended by Act March 7, 1911, Sess. Laws, 1911, p. 110.

The members of said grain commission shall receive five dollars ($5.00) for each day in going to, attending upon and returning from any meeting of said commission and their actual, necessary expenses while attending such meeting, but, not more than four (4) meetings shall be held in any one (1) year: *Provided,* That no one of said meetings shall continue longer than five (5) days. Revised Codes, Idaho, 1908, sec. 1483, as amended by Act March 5, 1909, Sess. Laws, 1909, p. 29.

All moneys collected by the grain commission from any source, shall be paid into the state treasury on or before the fifteenth day of the month succeeding said collection, accompanied with a statement showing from what source collected and the amount of such collection. It shall be the duty of the state treasurer to receive all moneys aforesaid, and to credit the same to the grain inspection fund, and said fund is hereby appropriated for the purpose of carrying out the provisions of this chapter. Revised Codes, Idaho, 1908, sec. 1484, p. 667.

All expenditures and salaries, not otherwise provided for in this chapter, shall be audited and paid out of the general fund upon warrants drawn by the state auditor, the same as the account of any other state official. Revised Codes, Idaho, 1908, sec. 1485, as amended by Act March 5, 1909, Sess. Laws, 1909, pp. 29, 30.

It shall be the duty of every person keeping, controlling, managing or operating as owner or agent, or superintendent of any company or corporation, and warehouse, commission house, forwarding house, mill, wharf, or other place where hay, grain, flour, wool or other products are stored, to keep in proper books, a record of all hay, grain, wool, flour, and other products received, stored or shipped, stating the gross weight, name of commodity, grade of commodity, per cent of dockage for dirt, smut, dampness, sprouted grain, bleached or other cause, net weight, and the name of the owner, and such book shall be opened to the

chief inspector or his deputies for examination and approval, and to deliver to the owner of such hay, grain, flour, wool or other product a warehouse receipt therefor, which receipt shall be consecutively numbered, and shall bear the date of its issuance, and state from whom received, the number of sacks, (if sacked), the gross number of pounds, dock for dirt, smut, dampness, sprouted, bleached or other cause, net number of pounds, and kinds and grade of grain, and the terms and conditions upon which such hay, grain, wool, flour and other product is stored; *Provided:* That in all such cases the receipt shall be conclusive evidence of what it contains as against said warehouse, and no further charge shall be made than is provided for in said receipt, and the grade so shown by said warehouse receipt shall conform to the grades established by said grain commission; *Provided, further:* That upon request of the owner, grain or hay may be put in a special pile or bin without grading, and if hay or grain has been damaged, it shall be received and piled in a special pile marked with the distinguishing mark, which shall be shown on the receipt for the same, and give number of sacks, bales, name of commodity and gross number of pounds. The failure to issue such receipt as directed, or issuance of slips, memoranda or other form of receipt, shall be an offense punishable by the provisions of this Act. Revised Codes, Idaho, 1908, sec. 1486, as amended by Act March 7, 1911, Sess. Laws, 1911, pp. 110, 111.

The receipt required in the last preceding section shall be in form as follows:

(Name of firm or company.)

No. ..... (Place and date.)

Received in store from (name of consignor), (quantity), gross ..... lbs., tare ..... lbs., net ..... lbs., No. ..... (give here grade and name of commodity), at owner's risk of unavoidable damage, to be delivered at this warehouse, upon return of this receipt, properly indorsed, and payment of charges. This receipt negotiable when duly indorsed by consignor. Storage to (here give amount and date).

(Signed.) (Name of firm or company.)
(Name of agent), Agent.

Revised Codes, Idaho, 1908, sec. 1487.

Above section construed:—Form of receipt considered and held to contain all the material and essential requirements prescribed. *State* v. *Henzell*, 17 Idaho 725.

No person shall issue any receipt or other vouchers as provided for in the two preceding sections for any grain, flour, wool

or other produce not actually in store at the time of issuing such receipt, or issue any receipt in any respect fraudulent in its character, either as to its date or the quantity, quality or grade of such property, or duplicate or issue a second receipt for the same while any former receipt is outstanding for the same property or any part thereof, without writing across the face of the same the word "duplicate." Revised Codes, Idaho, 1908, sec. 1488.

No person operating any warehouse, commission house, forwarding house, mill, wharf, or other place where grain, flour, wool, or other product or commodity, is stored, shall mix any grain, flour, wool, or other product or commodity, of different grades together (or different qualities of the same grade), or deliver one grade for another, or in any way tamper with the same while in his possession or custody; and such person shall in no case mix different grades together while in store without the consent of the owner or owners thereof in writing. Revised Codes, Idaho, 1908, sec. 1489.

No person operating any warehouse, commission house, forwarding house, mill, wharf, or other place of storage, shall sell, hypothecate, ship, transfer, or in any manner remove, or permit to be shipped, transferred or removed beyond his custody and control, any grain, flour, wool or other produce or commodity for which a receipt has been given by him as aforesaid, whether received for storing, shipping, grinding or manufacturing or other purposes, without the written assent of the holder of the receipt. Revised Codes, Idaho, 1908, sec. 1490.

Above section construed—Intent not necessary:—This statute (sec. 1490) requires no specific intent on the part of defendant. *State* v. *Henzell,* 17 Idaho 725, 732.

All checks or receipts given by any person operating any warehouse, commission house, forwarding house, mill, wharf or other place of storage for grain, flour, wool or other produce or commodity stored or deposited, and all bills of lading and transportation receipts of every kind, are hereby declared negotiable, and may be transferred by endorsement of the party to whose order such check or receipt was given or issued, and such indorsement shall be deemed a valid transfer of the commodity represented by such receipt, and may be made either in blank or to the order of another. Revised Codes, Idaho, 1908, Sec. 1491.

On the presentation of the receipt given by any person operating any warehouse, commission house, forwarding house, mill, wharf, or any other place of storage for hay, grain, flour, wool, or other produce or commodity, and on payment of all the charges due thereon, or tending payment of said charges, the owner shall be entitled to the immediate possession of the commodity named in such receipt; and it shall the duty of such warehouseman, wharfinger, millman, or other bailee, to deliver such commodity to the owner of such receipt. If not delivered within twenty-four (24) hours after such demand, any warehouseman, wharfinger, miller, or other bailee, after proper facilities have been provided, shall be liable to the owner for damages not exceeding one cent (1c) a bushel for each day's delay, unless he shall deliver to different owners in the order demanded, as rapidly as it can be done with ordinary diligence. Revised Codes, Idaho, 1908 Sec. 1492, as amended by Act March 7, 1911. Sess. Laws 1911, p. 111.

Any person shall have the right to use, as a site for a public warehouse, a proper portion of the right-of-way of any railroad, within the outside switches at any station or siding, upon the payment of reasonable compensation. Revised Codes, Idaho, 1908, Sec. 1492a, added by Act March 5, 1909. Sess. Laws, 1909, p. 32.

Whoever wishes to exercise such right may make written application to the person or company operating such railroad for such site, describing it, stating the size and capacity of the proposed warehouse, the station or siding at which it is to be built, the time for which such site is desired, and the amount of compensation the applicant is willing to pay. Revised Codes, Idaho, 1908, Sec. 1492b, added by Act March 5, 1909. Sess. Laws, 1909, p. 32.

Within ten (10) days after the receipt of such application, the operator of such railroad shall notify the applicant in writing of his acceptance or rejection of the compensation offered. If he fails so to do, he shall be deemed to have accepted the same. Upon acceptance and payment or tender of the compensation, the applicant shall thereupon be entitled to the site described. Revised Codes, Idaho, 1908, Sec. 1492c, added by Act March 5, 1909, Sess. Laws, 1909, p. 32.

If the offer be rejected, and the parties fail to agree on com-

pensation, the applicant may present to and file in the District Court of the County a verified petition setting forth the making of the application with a copy thereof, the compensation offered, its rejection, and the failure of the parties to agree. The Court shall thereupon by order fix a time and place for hearing such petition, not more than thirty (30) days from its presentation. Such order shall be served as a summons in said Court if served, at least twenty (20) days before the time set for such hearing, which service shall give the Court jurisdiction of both person and property. Revised Codes, Idaho, 1908, Sec. 1492d, added by Act March 5, 1909. Sess. Laws, 1909, p. 32.

If such hearing be set at a time other than a term of Court where a petit jury is in attendance, the Court, unless a jury be waived, shall order the selection of twenty-four (24) jurors from the list returned by the County Board in the manner provided for drawing jurors for a general term of such Court, and the case shall be tried as other civil actions, and the compensation to be paid shall be assessed, both as a gross sum and an annual rental. The respondent shall elect either to receive the gross sum or the annual rental, and, if he fail to elect, the petitioner may do so, and judgment shall be entered accordingly. Revised Codes, Idaho, 1908, Sec. 1492e, added by Act March 5, 1909. Sess. Laws, 1909, p. 32.

Either party may appeal as from a judgment in a civil action within thirty (30) days from the entry of judgment; but such appeal shall not stay the right of the petitioner to use the site designated, if the petitioner shall give bonds with sureties approved by the Court in double the gross sum of annual rental fixed by the judgment, condition to pay such sum or rental, and abide and satisfy any judgment the Supreme Court may render in the premises. Revised Codes, Idaho, 1908, Sec. 1492f, added by Act March 5, 1909. Sess. Laws, 1909, p. 33.

If the amount fixed by the final judgment be more than that offered in the application, the respondent shall recover costs and disbursements as in a civil action; otherwise, the petitioner. Revised Codes, Idaho, 1908, Sec. 1492g, added by Act March 5, 1909 Sess. Laws, 1909, p. 33.

If the compensation, as finally fixed or agreed upon, be not paid within thirty (30) days after the amount is finally settled, or if the applicant shall not begin the erection of such warehouse within two months, and complete the same and open it for busi-

ness as a public warehouse within five months, after designation of the site, the application shall be deemed abandoned. Revised Codes, Idaho, 1908, Sec. 1492h, added by Act March 5, 1909. Sess. Laws, 1909, p. 33.

Any person, firm or corporation superintendent or trustees of any Board of Directors of any firm or corporation, who shall violate any of the provisions of this Chapter shall be guilty of a felony, and, upon conviction therof, shall be fined in any sum not to exceed Five Thousand Dollars ($5000) or be imprisoned in the penitentiary of the State not exceeding five years or both; and in case of a corporation, the person acting for such corporation shall be liable for a like punishment upon indictment and conviction, and all and every person or persons aggrieved by a violation of this Chapter, may have and maintain an action at law against the person or persons, corporation or corporations, violating any of the provisions of this Chapter, to recover all damages, immediate or consequential, which he or they have sustained by reason of such violation, before any Court of competent jurisdiction, whether such person shall have been convicted under this Chapter or not. Revised Codes, Idaho, 1908, Sec. 1493, as amended by Act, March 7, 1911. Sess. Laws, 1911, pp. 111, 112.

The following sections,—1493a, 1493b, 1493c, 1493d, 1493e, 1493f, 1493g, 1493h, 1493i, 1493j and 1493k, were added to section 1493 by Act March 7, 1911, Sess. Laws, 1911, pp. 112-115:

Sec. 1493a.—On or about the first day of May, the State Hay and Grain Commission shall meet and establish necessary rules and regulations for handling hay, grain and other farm products for the ensuing year.

Sec. 1493b.—Every warehouseman shall, on or before the fifteenth day of July in each year, render to such commission, on blanks prepared by it, an itemized and verified report of all business transacted by him during the year beginning July first of the preceding year and ending June 30 of the current year. Such report shall state the owner's name, name and kind of commodity, gross and net pounds, per cent of dock, cause of dockage and the number of sacks or bales of all hay, grain, flour, wool or other products in his warehouse at the beginning of the year, the owner's name, commodity and kind, number of sacks or bales, gross and net weight, per cent of dock, and cause of dockage of all

hay, grain, flour, wool, or other products shipped or delivered from such warehouse, and the owner's name, commodity and kind, number of sacks or bales, gross and net weight, per cent of dock, and cause of dockage of all hay, grain, flour, wool or other product remaining in the warehouse at the end of the year, and such report shall particularly specify and account for any overage or shortage in any kind of hay, grain, flour, wool or other products occurring during the year. The Commission may also require special reports from each warehouseman at such times as the Commission may deem expedient, and the Commission may cause every such warehouse and the business thereof, and the mode of conducting the same to be inspected by one or more of its members or by its authorized agent whenever deemed proper, and the property, books, records, accounts, papers and proceedings of every warehouseman shall at all times during business hours be subject to such inspection.

Sec. 1493c.—The Commission shall make such rules as may be necessary in regard to the receipt and delivery of grain, the issuance, cancellation, division and consolidation of warehouse receipts, and such other matters relative to the management of the business of local warehouses as it may deem proper, and may prescribe a uniform system of books, records, accounts and reports to be made to the Commission.

Sec. 1493d.—All weigh masters, agents or superintendents of any company, firm or corporation, operating any warehouse, commission house, forwarding house, mill, wharf, or other place where hay, grain, wool, flour or other products are stored, shall be licensed annually by the Commission. Application for such license shall be made before transacting warehouse business.

Every license shall expire on the year following date of issue. The fee for such license shall be One Dollar ($1.00) for each weighmaster, agent or superintendent authorized to weigh any hay, grain, flour, wool or other farm products, or to issue warehouse receipts. Any such license may be revoked by the Commission upon notice and hearing.

Sec. 1493e.—The State Hay and Grain Inspector, with the approval of the Commission, shall appoint such number of deputies as may be necessary, fixing salaries thereof, and may establish headquarters and properly equip same with proper facilities

for recording all transactions, and testing, grading, and classifying all hay, grain, wool, flour, or other farm products.

Sec. 1493f.—The fees for inspection and grading hay, grain, or other products shall be fixed by the Commission and shall be a lien upon the grain. If the grain is in transit, such fees shall be paid by the carrier and treated as advanced charges, and if received for storage, by the warehouseman, and added to the storage charges. All moneys so collected and all fines and penalties for violation of any of the provisions of this Chapter shall be paid into the State Treasury and known as the "State Hay and Grain Commission Fund," and paid out only on order of the Commission and Auditor's warrants. All interest recovered from deposits of said moneys shall be credited on the first of each month to such fund, and notice of the amount of such interest shall be sent to the Chief Hay and Grain Inspector.

Sec. 1493g.—Upon written complaint filed with the Commission, charging an Inspector of Hay, Grain or Scales with official misconduct, inefficiency, incompetency or neglect of duty, the Commission shall investigate such charge, and if any of such charges be sustained, shall remove such officer.

Sec. 1493h.—All scales used in public warehouses, depot scales, street scales, or scales used in stock yards, for the weighing of grain, hay, wool, coal, livestock, or other farm commodities, shall be under the control of the State Hay and Grain Commission, and subject to the inspection and correction at least once a year by the State Hay and Grain Inspector or his deputies, and shall be exempt from the jurisdiction of the Sealer of Weights and Measures. They shall be inspected at the request of any person interested in any hay, grain, wool, coal, livestock, or other commodities, weighed or to be weighed thereon. If found incorrect, the cost of inspection shall be paid by the owner thereof, otherwise by the person requesting inspection. No scales found incorrect shall be used until re-examined and found correct.

Sec. 1493i.—The Inspector shall, at least once a year, examine, test and require to be correct all scales used in weighing hay, grain, wool, coal, livestock or other commodities, at any public warehouse, depot, stockyards, or other public place in the State, and after such scale is tested and found to be correct and in good condition, to issue to the owner or manager of such ware-

house, depot, agent, manager or owner of any such public scale, a certificate authorizing the use of such scales for the weighing of hay, grain, wool, coal, livestock, or other commodities for the ensuing year, unless sooner revoked by the Inspector. If such scales are found to be inaccurate or unfit for use, the Inspector shall notify the party using them, and the party thus notified shall, at his own expense, thoroughly repair the same before attempting to use them, and until thus repaired to the satisfaction of the Inspector, the certificate of such party shall be suspended or revoked in the discretion of the Inspector, and the party receiving such certificate shall pay to the Inspector the sum of One Dollar ($1.00) for each wagon scale and Fifty Cents (50c) for each platform scale so inspected as herein enumerated.

Sec. 1493j.—Any person, agent or corporation who shall obstruct any Inspector in the performance of his official duties by preventing his proper access to the scales used in the weighing of grain, hay, wool, coal, livestock or other commodities, or the inspection of hay, grain, flour, wool, or other commodities stored in special piles, or otherwise, or the examination of receipt and shipping books, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined in a sum of not more than Fifty Dollars ($50) and costs of prosecution. Any agent of any company or corporation, manager, foreman, or person in the employ of the warehouse under inspection shall, if deemed necessary by the Chief Inspector or any of his deputies, re-weigh, in the presence of the Inspector, any load or pile of grain, hay, wool, coal, or draft or drafts of livestock, or other commodities.

Sec. 1493k.—Any Inspector, Deputy Inspector, or Scale Inspector who shall knowingly or carelessly inspect any grain or scales, or weigh, grade or classify any grain improperly, or give any false certificate of inspection or weight, or accept money or other consideration, directly or indirectly, for neglect or improper performance of duty, or neglect any duty prescribed by this Chapter, or the rules and regulations established by the Commission; or any person who shall improperly influence or attempt to influence any such officer in the performance of his official duties, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not to exceed One Hundred Dollars ($100) and costs of prosecution. The four last sections of the Act of March 7, 1911, Sess. Laws, 1911, p. 115, are as follows:

Sec. 8.—There is hereby appropriated out of the moneys in the State Treasury, not otherwise appropriated, the sum of Seven Thousand Five Hundred Dollars ($7,500), annually, or so much thereof as may be necessary to carry into effect and force the several provisions of this Act. Such sums of money so appropriated shall be set aside, and constitute and be known as the State Hay and Grain Commission Fund.

Sec. 9.—It is hereby made the duty of the prosecuting attorneys of the various counties of this State, upon proper information being laid before them, to prosecute any person, firm, company or corporation charged with the violation of any of the provisions of this Act.

Sec. 10.—All Acts and parts of Acts inconsistent with the provisions of this Act are hereby repealed; *Provided:* That nothing contained in this Act shall be construed to repeal by implication or otherwise any of the penal provisions of Title 8, of Chapter 31, of the Revised Codes of Idaho, to which reference is hereby made as amending, and all provisions herein are expressly made applicable to the provisions of Title 8, of Chapter 31, of said Idaho Codes.

Sec. 11.—Whereas an emergency exists this Act shall be in full force and effect from and after its passage and approval. Approved March 7, 1911.

Every person intrusted with any property as bailee, tenant, or lodger, or with any power of attorney for the sale or transfer thereof, who fraudulently converts the same or the proceeds thereof to his own use, or secretes it or them with a fraudulent intent to convert to his own use, is guilty of embezzlement. Revised Codes, Idaho, 1908, Sec. 7069.

By Act approved March 10th, 1913, Chapter 2 of Title 10 of the Civil Code of Revised Codes of the State of Idaho is amended by adding thereto the following section to be known as Section 3331A.

Any warehouse, storage, forwarding or commission merchant, or person selling on commission, or his agent, clerk or servant, who converts to his own use any property, or the proceeds thereof, without the consent of the owner, or fails to pay over the proceeds, less proper charges, on demand, to the person entitled thereto, or his agent, is liable to the person injured in double

the value of the property converted. Sess. Laws Idaho 1913, Chap. 101, page 422.

DECISIONS AFFECTING WAREHOUSEMEN

Q.

"In good order" construed.—Where the plaintiff has signed a receipt for goods received from a carrier, or other bailee, in which it is stated that the goods are received in good order, it was *held* that, although this statement would not estop the plaintiff from afterward proving that the goods were in a damaged condition, it nevertheless raised a strong presumption in the defendant's favor. It is a fact about which evidence may be received to fully explain the circumstances under which the statement was made and signed. *Bloomingdale* v. *Du Rell & Co.* 1 Idaho 33.

CHAPTER XIII

ILLINOIS

LAWS PERTAINING TO WAREHOUSEMEN.

The Uniform Warehouse Receipts Act is in force in Illinois; it was approved May 29, 1907, to be in force July 1, 1907, see Revised Statutes Ill., 1912, pp. 1869-1878, sections 241 to 300 incl., chapter 114, also this volume, p. 1. The last section differs from the Uniform Receipts Act and is as follows:

Repeal:—All acts or parts of acts inconsistent with this act are hereby repealed: *Provided, however,* That nothing in this act shall be construed to repeal any of the provisions of an act entitled, "An act to regulate public warehouses and the warehousing and inspection of grain and to give effect to article thirteen of the Constitution of this State" (approved April 25, 1871, in force July 1, 1871), except in so far as said last named act relates to warehouse receipts for property stored in public warehouses of Class C, or to repeal the provisions of an act entitled "An act providing for the issuing and the cancellation of receipts for public warehouses or warehouses of Class A or Class B in the State of Illinois, and providing penalties for violation thereof" (approved May 11, 1901, in force July 1, 1901). Rev. Stats. Ill., 1912, Chap. 114, Sec. 300.

ARTICLE XIII OF THE CONSTITUTION OF ILLINOIS AND LAWS PERTAINING TO WAREHOUSEMEN.

Art. XIII. Constitution of Illinois

Section 1.—All elevators or storehouses where grain or other property is stored for a compensation, whether the property stored be kept separate or not, are declared to be public warehouses.

Sec. 2.—The owner, lessee or manager of each and every public warehouse situated in any town or city of not less than 100,000 inhabitants, shall make weekly statements under oath,

before some officer to be designated by law, and keep the same posted in some conspicuous place in the office of such warehouse, and shall also file a copy for public examination in such place as shall be designated by law, which statement shall correctly set forth the amount and grade of each and every kind of grain in such warehouse, together with such other property as may be stored therein, and what warehouse receipts have been issued, and are, at the time of making such statement, outstanding therefor; and shall, on the copy posted in the warehouse, note daily such changes as may be made in the quantity and grade of grain in such warehouse; and the different grades of grain shipped in separate lots shall not be mixed with inferior or superior grades without the consent of the owner or consignee thereof.

Sec. 3.—The owners of property stored in any warehouse, or holder of a receipt for the same, shall always be at liberty to examine such property stored, and all the books and records of the warehouse in regard to such property.

Sec. 4.—All railroad companies and other common carriers on railroads shall weigh or measure grain at points where it is shipped, and receipt for the full amount, and shall be responsible for the delivery of such amount to the owner or consignee thereof, at the place of destination.

Sec. 5.—All railroad companies receiving and transporting grain in bulk or otherwise, shall deliver the same to any consignee thereof, or any elevator or public warehouse to which it may be consigned, provided such consignee or the elevator or public warehouse can be reached by any track owned, leased or used, or which can be used, by such railroad companies; and all railroad companies shall permit connections to be made with their track, so that any such consignee, and any public warehouse, coal bank or coal yard, may be reached by the cars on said railroad.

Sec. 6.—It shall be the duty of the general assembly to pass all necessary laws to prevent the issue of false and fraudulent warehouse receipts, and to give full effect to this article of the constitution, which shall be liberally construed so as to protect producers and shippers. And the enumeration of the remedies herein named shall not be construed to deny to the general as-

sembly the power to prescribe by law such other and further remedies as may be found expedient, or to deprive any person of existing common-law remedies.

Sec. 7.—The general assembly shall pass laws for the inspection of grain, for the protection of producers, shippers and receivers of grain and produce. Revised Stats. Ill., 1912, p. LXXIV.

In *Hannah* v. *The People,* 198 Ill. 77, the law of 1907, page 300, was held to be in conflict with these provisions of the constitution.

An Act to regulate public warehouses, and the warehousing and inspection of grain and to give effect to article thirteen of the constitution of this state. Approved April 25, 1871. In force July 1, 1871, L. 1871, 1872, p. 762.

Above act held to be constitutional:—This act was *held* to be constitutional on the ground that the legislature had the right in the exercise of the police power to prescribe maximum rates of storage, it not being contended that such rates would be in effect prohibitive of the business; the court further *held* that the act did not violate either the state or federal constitutions. *Munn* v. *The People,* 69 Ill. 80, aff'd 94 U. S. 113. (See Illinois decisions, page 225.)

Same—No authority for appointment of inspectors for warehouses of Class B:—In an action of *quo warranto* instituted against the Board of Trade of East St. Louis, the plaintiff charged the defendant with proceeding without warrant of law in the appointment of grain inspectors of warehouses and elevators, known as Class B, and in that it charged and collected from the plaintiff and other owners, not being members of said board, inspection fees. It was *held* that although section 19 of the above act provided that no proprietor of a warehouse of Class B shall be permitted to receive any grain or mix the same with the grain of other owners in the storage thereof, until the same shall have been inspected and graded by a regularly appointed inspector, that in view of the fact that the above law did not provide for the appointment of such inspectors that it could not be said that it conferred such power upon the defendant or that it had delegated this power at all. Further, that the contention that the act of 1871 was intended as an amendment to the charter of the board of the defendant could not be sustained, as no such inten-

tion is exhibited therein either expressly or impliedly. Further, that as no appointment was provided for in this act and none was made, proprietors of warehouses of Class B could conduct their business without inspectors as they had done prior to the passage of the act. And that this seeming defect in the act did not, in the judgment of the court, invest the defendant with the important power of appointing inspectors of grain. *East St. Louis Board of Trade* v. *The People*, 105 Ill. 382.

Classified:—*Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That public warehouses, as defined in article 13 of the constitution of this state, shall be divided into three classes, to be designated as classes A, B, and C, respectively. Revised Statutes of Illinois, 1912, ch. 114, sec. 134.

Classes defined:—Public warehouses of Class A shall embrace all warehouses, elevators and granaries in which grain is stored in bulk, and in which the grain of different owners is mixed together, or in which grain is stored in such a manner that the identity of different lots or parcels cannot be accurately preserved, such warehouses, elevators or granaries being located in cities having not less than 100,000 inhabitants. Public warehouses of Class B shall embrace all other warehouses, elevators or granaries in which grain is stored in bulk, and in which the grain of different owners is mixed together. Public warehouses of Class C shall embrace all other warehouses or places where property of any kind is stored for a consideration. *Id.* ch. 114, sec. 135.

Above section construed—Class C warehouses:—"Public warehouses of Class C shall embrace all other warehouses or places where property of any kind is stored for a consideration." These sweeping words embrace any place so used, whether owned or hired by the warehousemen, and, if so, they embrace as well a place hired of the owner of the goods as one hired of anybody else. *Union Trust Co.* v. *Wilson*, 198 U. S. 530, 538.

License:—The proprietor, lessee or manager of any public warehouse of Class A shall be required, before transacting any business in such warehouse, to procure from the Board of Commissioners of Railroads and Warehouses, a license, permitting

such proprietor, lessee or manager to transact business as a public warehouseman under the laws of this state, which license shall be issued by said commissioners upon a written application therefor, which shall set forth the location and name of such warehouse, and the individual name of each person interested as owner or principal in the management of the same; or, if the warehouse be owned or managed by a corporation, the names of the president, secretary and treasurer of such corporation shall be stated; and the said license shall give authority to carry on and conduct the business of a public warehouse of Class A in accordance with the laws of this state, and shall be revocable by the said Commissioners, after full hearing, upon satisfactory proof of any violation of law by such licensee, such proof to be taken in such manner as may be directed by and under rules to be established by said Commissioners, but the action of such Commissioners, in granting or refusing licenses and in revoking licenses may be reviewed by the Circuit Court of the county where such elevator or warehouse is located. *Id.* ch. 114, sec. 136.

Above section construed—jurisdiction of circuit court to grant and revoke licenses:—Under section three of the above act, it was *held* that the circuit court has exclusive jurisdiction to grant or revoke licenses to warehousemen of Class A. It apeared that prior to the passage of the above act, that the legislature passed on April 13, 1871, an act to establish a railroad and warehouse commission in which it was provided that if it should appear to said commission, after a regular hearing, that a public warehouseman had been guilty of violating any law in the state of Illinois, that such commission might revoke his license and that he should not be entitled to another license until the expiration of six months. When this act was approved there was not, and never had been, any law providing for the issuance of licenses to warehousemen. Therefore the act given above was the first law in the state by which the issuance of licenses to warehousemen was authorized. Under the terms of this act, the circuit court is given authority to issue such licenses to warehousemen of Class A and, after proper hearing, to revoke the same, and that its jurisdiction was exclusive in this regard. *Cantrell et al.* v. *Seaverns*, 168 Ill. 165, aff'g *Same* v. *Same*, 64 Ill. App. 273.

Bond:—The person receiving a license as herein provided, shall file with the Board of Commissioners of Railroads and Warehouses, a bond to the People of the State of Illinois, with good and sufficient surety, to be approved by said Commissioners, in a penal sum to be fixed by said Commissioners, and which shall not be less than ten thousand dollars, conditioned for the faithful performance of his duty as a public warehouseman of Class A, and his full and unreserved compliance with all the laws of this state in relation thereto. Revised Stats. Ill. 1912, ch. 114, sec. 137.

Penalty for doing business without license:—Any person who shall transact the business of a public warehouse of Class A without first procuring a license as herein provided, or who shall continue to transact any such business after such license has been revoked (save only that he may be permitted to deliver property previously stored in such warehouse) shall, on conviction, be fined in a sum not less than one hundred dollars for each and every day such business is so carried on. *Id.* ch. 114, sec. 138.

Not to discriminate—When grain may be mixed—Receipts:—It shall be the duty of every warehouseman of Class A to receive for storage any grain that may be tendered him in the usual manner in which warehouses are accustomed to receive the same in the ordinary and usual course of business, not making any discrimination between persons, desiring to avail themselves of warehouse facilities—such grain, in all cases, to be inspected and graded by a duly authorzed inspector, and to be stored with grain of a similar grade, received at the same time, as near as may be. In no case shall grain of different grades be mixed together while in store; but if the owner or consignee so requests and the warehouseman consents thereto, his grain of the same grade may be kept in a bin by itself, apart from that of other owners, which bin shall thereupon be marked and known as a "separate bin." If a warehouse receipt be issued for grain so kept separate, it shall state on its face that it is in a separate bin, and shall state the number of such bin; and no grain shall be delivered from such warehouse unless it be inspected on the delivery thereof by a duly authorized inspector of grain. Nothing in this section shall be so construed as to require the receipt of grain into any warehouse, in which there is not sufficient room to accommodate or store it properly, or in cases where such

warehouse is necessarily closed. No grain shall be received into any private elevator or warehouse located in cities having a population of not less than 100,000 inhabitants until it shall have been inspected by a duly authorized inspector, and no grain shall be delivered from any such private elevator or warehouse in cars or boats for shipment until it shall have been inspected out by a duly authorized inspector. Any proprietor, lessee or manager of any warehouse or elevator who shall refuse or neglect to cause grain to be inspected as in this section provided, shall, upon conviction be fined in a sum not less than one hundred dollars for each and every offense. *Id.* ch. 114, sec. 139.

Manner of issuing receipts:—Upon application of the owner or consignee of grain stored in a public warehouse of Class A, the same being accompanied with evidence that all transportation or other charges which may be a lien upon such grain, including charges for inspection, have been paid, the warehouseman shall issue to the person entitled thereto, a warehouse receipt therefor, subject to the order of the owner or consignee, which receipt shall bear date corresponding with the receipt of grain into store, and shall state upon its face the quantity and inspected grade of the grain, and that the grain mentioned in it has been received into store, to be stored with grain of the same grade by inspection, received at about the date of the receipt, and that it is deliverable upon the return of the receipt, properly indorsed by the person to whose order it was issued, and the payment of proper charges for storage. All warehouse receipts for grain, issued from the same warehouse, shall be consecutively numbered; and no two receipts, bearing the same number, shall be issued from the same warehouse during any one year, except in the case of a lost or destroyed receipt, in which case the new receipt shall bear the same date and number as the original, and shall be plainly marked on its face "duplicate." If the grain was received from railroad cars, the number of each car shall be stated upon the receipt, with the amount it contained; if from canal boat or other vessel, the name of such craft; if from teams or by other means, the manner of its receipt shall be stated on its face. *Id.* ch. 114, sec. 140.

Cancelling receipts:—Upon the delivery of grain from store, upon any receipt, such receipt shall be plainly marked across its face with the word "cancelled," with the name of the person

cancelling the same, and shall thereafter be void, and shall not again be put in circulation, nor shall grain be delivered twice upon the same receipt. *Id.* ch. 114, sec. 141.

Further of issuing and cancelling receipts:—No warehouse receipt shall be issued, except upon the actual delivery of grain into store, in the warehouse from which it purports to be issued, and which is to be represented by the receipt; nor shall any receipt be issued for a greater quantity of grain than was contained in the lot or parcel stated to have been received; nor shall more than one receipt be issued for the same lot of grain, except in cases where receipts for a part of a lot are desired, and then the aggregate receipts for a particular lot shall cover that lot and no more. In cases where a part of the grain represented by the receipt is delivered out of store and the remainder is left, a new receipt may be issued for such remainder; but such new receipt shall bear the same date as the original, and shall state on its face that it is balance of receipt of the original number; and the receipt upon which a part has been delivered shall be cancelled in the same manner as if it had all been delivered. In case it be desirable to divide one receipt into two or more, or in case it be desirable to consolidate two or more receipts into one, and the warehouseman consents thereto, the original receipt shall be cancelled the same as if the grain had been delivered from store; and the new receipts shall express on their face that they are parts of other receipts, or a consolidation of other receipts, as the case may be; and the numbers of the original receipts shall also appear upon the new ones issued, as explanatory of the change but no consolidation of receipts of dates differing more than ten days shall be permitted, and all new receipts issued for old ones cancelled, as herein provided, shall bear the same dates as those originally issued, as near as may be. *Id.* ch. 114, sec. 142.

Not to limit liability:—No warehouseman in this state shall insert in any receipt issued by him, any language in any wise limiting or modifying his liabilities or responsibility, as imposed by the laws of this state. *Id.* ch. 114, sec. 143.

Delivery of property:—On the return of any warehouse receipt issued by him, properly indorsed, and the tender of all proper charges upon the property represented by it, such property

shall be immediately deliverable to the holder of such receipt, and it shall not be subject to any further charges for storage, after demand for such delivery shall have been made. Unless the property represented by such receipt shall be delivered within two business hours after such demand shall have been made, the warehouseman in default shall be liable to the owner of such receipt for damages for such default, in the sum of one cent per bushel, and in addition thereto, one cent per bushel for each and every day of such neglect or refusal to deliver: *Provided*, no warehouseman shall be held to be in default in delivering if the property is delivered in the order demanded, and as rapidly as due diligence, care and prudence will justify. *Id.* ch. 114, sec. 144.

Posting grain in store—Statement to registrar—Daily publication—Cancelled receipts:—The warehousemen of every public warehouse of Class A shall, on or before Tuesday morning of each week, cause to be made out, and shall keep posted up in the business office of his warehouse, in a conspicuous place, a statement of the amount of each kind and grade of grain in store in his warehouse at the close of business on the previous Saturday; and shall, also, on each Tuesday morning, render a similar statement, made under oath before some officer authorized by law to administer oaths, by one of the principal owners or operators thereof, or by the bookkeeper thereof, having personal knowledge of the facts, to the warehouse registrar appointed as hereinafter provided. They shall also be required to furnish daily, to the same registrar, a correct statement of the amount of each kind and grade of grain received in store in such warehouse on the previous day; also the amount of each kind and grade of grain delivered or shipped by such warehouseman during the prevoius day, and what warehouse receipts have been cancelled, upon which the grain has been delivered on such day, giving the number of each receipt, and amount, kind and grade of grain received and shipped upon each; also, how much grain, if any, was so delivered or shipped, and the kind and grade of it, for which warehouse receipts had not been issued, and when and how such unreceipted grain was received by them; the aggregate of such reported cancellations and delivery of unreceipted grain, corresponding in amount, kind and grade with the amount so reported, delivered or shipped. They shall also, at the same time, report what receipts, if any, have been cancelled

and new ones issued in their stead, as herein provided for. And the warehouseman making such statements, shall, in addition, furnish the said registrar any further information, regarding receipts so issued or cancelled, that may be necessary to enable him to keep a full and correct record of all receipts issued and cancelled, and of grain received and delivered. *Id.* ch. 114, sec. 145.

Appointment of chief inspector:—It shall be the duty of the Governor to appoint by and with the advice and consent of the Senate, a suitable person who shall not be a member of the board of trade, and who shall not be interested either directly or indirectly, in any warehouse in this State, a chief inspector of grain for the entire state of Illinois, who shall hold his office for a term of two years unless sooner removed as hereinafter provided; the office of said chief inspector of grain shall be in the City of Chicago. *Id.* ch. 114, sec. 146, par. 1.

Duty of chief inspector:—It shall be the duty of such chief inspector of grain to have a general supervision of the inspection of grain, as required by this act or laws of this State, under the advice and immediate direction of the Board of Commissioners of Railroads and Warehouses; also, to have general supervision over all deputy inspectors now appointed or hereafter to be appointed. *Id.* ch. 114, sec. 146, par. 2.

Deputy inspectors:—The said chief inspector shall have the authority to appoint, upon the approval of the Board of Commissioners of Railroads and Warehouses, such suitable persons in sufficient numbers to act as deputy inspectors, who shall not be members of the board of trade nor interested in any warehouse, and also such other employes as may be necessary to properly conduct the business of his office; but no deputy inspector shall be appointed for or assigned to duty in any city or county in which is located one or more elevators of class B, except upon a request for such action by the county commissioners or board of supervisors of the county in which such warehouse or warehouses are located, such request to be made to the Railroad and Warehouse Commissioners and in cities or counties wherein a deputy inspector may be appointed or assigned to duty, no person other than such deputy inspector shall inspect or grade any grain without being liable to the penalties provided in section 20 of this Act. *Id.* ch. 114, sec. 146, par. 3.

When inspector to take oath and give bond:—The chief inspector of grain shall, upon entering upon the duties of his office be required to take an oath as in cases of other officers, and he shall execute a bond to the People of the State of Illinois, in the penal sum of fifty thousand dollars, with sureties to be approved by the Board of Commissioners of Railroads and Warehouses, with a condition therein that he will faithfully discharge the duties of his said office of chief inspector of grain according to law, and the rules and regulations prescribing his duties; and that he will pay all lawful damages to any person or persons who may be injured by reason of his neglect, refusal or failure to legally comply with the law and the rules and regulations aforesaid. *Id.* ch. 114, sec. 146, par. 4.

Deputy inspector—Oath—Bond:—And each deputy inspector shall take a like oath, and execute a bond in the penal sum of five thousand dollars when appointed with like conditions, and to be approved in like manner as is provided in case of the chief inspector of grain, which said bonds shall be filed in the office of said commissioners; and suit may be brought upon said bond or bonds in any court having jurisdiction thereof, in the county where the plaintiff or defendant resides, for the use of the person or persons injured. *Id.* ch. 114, sec. 146, par. 5.

Rules for government of inspectors:—The chief inspector of grain, and all deputy inspectors of grain and other employes in connection therewith, shall be governed in their respective duties by such rules and regulations as may be prescribed by the Board of Commissioners of Railroads and Warehouses; and the said Board of Commissioners shall have full power to make all proper rules and regulations for the inspection of grain, and shall, also, have power to fix the rate of charges for the inspection of grain and the manner in which the same shall be collected, which charges shall be regulated in such manner as will, in the judgment of the commissioners, produce sufficient revenue to meet the necessary expenses of the service of inspection, but the revenues received from such inspection in any county or city shall in no event be used to pay deficit in any other county or city. *Id.* ch. 114, sec. 146, par. 6.

Compensation:—It shall be the duty of the board of commissioners to fix the amount of compensation to be paid to the

chief inspector, deputy inspectors and all other persons employed in the inspection service, and prescribe the time and manner of their payment. *Id.* ch. 114, sec. 146, par. 7.

Appointment of warehouse registrar:—The Board of Commissioners of Railroads and Warehouses are hereby authorized to appoint a suitable person as warehouse registrar and such assistants as may be deemed necessary to perform the duties imposed upon such registrar by the provisions of this act. *Id.* ch. 114, sec. 146, par. 8.

Board of commissioners to exercise general supervision:—The said board of commissioners shall have and exercise a general supervision and control of such appointees, shall prescribe their respective duties, shall fix the amount of their compensation and the time and manner of its payment. *Id.* ch. 114, sec. 146, par. 9.

Penalty for violating act:—Upon the complaint in writing of any person to the said board of commissioners, supported by reasonable and satisfactory proof, that any person appointed or employed under the provisions of this section has violated any of the rules prescribed for his government, has been guilty of any improper official act, or has been found insufficient or incompetent for the duties of his position, such person shall be immediately removed from his office or employment by the same authority that appointed him, and his place shall be filled, if necessary, by a new appointment; or, in case it shall be deemed necessary to reduce the number of persons so appointed or employed, their term of service shall cease under the orders of the same authority by which they were appointed or employed. *Id.* ch. 114, sec. 146, par. 10.

Necessary expenses of inspection of grain:—All necessary expenses incident to the inspection of grain, and to the office of registrar, economically administered, including the rent of suitable offices, shall be deemed expenses of the inspection service and shall be included in the estimate of expenses of such inspection service and shall be paid from the funds collected for the same. *Id.* ch. 114, sec. 146, par. 11.

Rates of storage:—Every warehouseman of public warehouses of Class A shall be required, during the first week in January of each year, to publish in one or more of the newspapers

(daily, if there be such) published in the city in which such warehouse is situated, a table or schedule of rates for the storage of grain in his warehouse during the ensuing year, which rates shall not be increased (except as provided in section 16 of this act) during the year; and such published rates, or any published reduction of them, shall apply to all grain received into such warehouse from any person or source, and no discrimination shall be made directly or indirectly, for or against any charges made by such warehouseman for the storage of grain. The maximum charge for storage and handling of grain, including the cost of receiving and delivering, shall be, for the first ten days or part thereof, one and one-quarter (1¼) cents per bushel, and for each ten days, or part thereof after the first ten days one-half of one cent per bushel: *Provided, however*, that grain damp, or liable to early damage, as indicated by its inspection when received, may be subject to two cents per bushel storage, for the first ten days, and for each additional five days, or part thereof not exceeding one-half of one cent per bushel: *Provided, further*, that where grain has been received in any such warehouse prior to the first day of March, 1877, under any express or implied contract to pay and receive rates of storage different from those prescribed by law, or where it has been received under any custom or usage prior to said day to pay or receive rates of storage different from the rates fixed by law, it shall be lawful for any owner or manager of such warehouse to receive and collect such agreed or customary rates. *Id.* ch. 114, sec. 147.

Loss by fire—Heating—Order of delivery—Grain out of condition:—No public warehouseman shall be held responsible for any loss or damage to property by fire, while in his custody, provided reasonable care and vigilance be exercised to protect and preserve the same; nor shall he be held liable for damage to grain by heating, if it can be shown that he has exercised proper care in handling and storing the same, and that such heating or damage was the result of causes beyond his control; and, in order that no injustice may result to the holder of the grain in any public warehouse of Classes A or B, it shall be deemed the duty of such warehouseman to dispose of, by delivery or shipping, in the ordinary and legal manner of so delivering, that grain of any particular grade which was first received

by them, or which has been for the longest time in store in his warehouse; and, unless public notice has been given that some portion of the grain in his warehouse is out of condition, or becoming so, such warehouseman shall deliver grain of quality equal to that received by him, on all receipts as presented. In case, however, any warehouseman of Classes A or B shall discover that any portion of the grain in his warehouse is out of condition, or becoming so, and it is not in his power to preserve the same, he shall immediately give public notice, by advertisement in a daily newspaper in the city in which such warehouse is situated, and by posting a notice in the most public place (for such purpose) in such city, of its actual condition, as near as he can ascertain it; shall state in such notice the kind and grade of the grain, and the bins in which it is stored; and shall also state in such notice the receipts outstanding upon which such grain will be delivered, giving the numbers, amounts and dates of each—which receipts shall be those of the oldest dates then in circulation or uncancelled, the grain represented by which has not previously been declared or receipted for as out of condition, or if the grain longest in store has not been receipted for, he shall so state, and shall give the name of the party for whom such grain was stored, the date it was received, the amount of it; and the enumeration of receipts and identification of grain so discredited shall embrace, as near as may be, as great a quantity of grain as is contained in such bins; and such grain shall be delivered upon the return and cancellation of the receipts, and the unreceipted grain upon the request of the owner or person in charge thereof. Nothing herein contained shall be held to relieve the said warehouseman from exercising proper care and vigilance in preserving such grain after such publication of its condition; but such grain shall be kept separate and apart from all direct contact with other grain, and shall not be mixed with other grain while in store in such warehouse. Any warehouseman guilty of any act of neglect, the effect of which is to depreciate property stored in the warehouse under his control, shall be held responsible as at common law, or upon the bond of such warehouseman, and in addition thereto, the license of such warehouseman, if his warehouse be of class A, shall be revoked. Nothing in this section shall be so construed as to permit any warehouseman to deliver any grain stored in a

special bin, or by itself, as provided by this act, to any but the owner of the lot, whether the same be represented by a warehouse receipt or otherwise. In case the grain declared out of condition, as herein provided for, shall (not) be removed from store by the owner thereof within two months from the date of the notice of its being out of condition, it shall be lawful for the warehouseman where the grain is stored to sell the same at public auction, for account of said owner, by giving ten days' public notice, by advertisement in a newspaper (daily, if there be such) published in the city or town where such warehouse is located. *Id.* ch. 114, sec. 148.

Tampering with grain stored—Private bins—Drying, cleaning, moving:—It shall not be lawful for any public warehouseman to mix any grain of different grades together, or to select different qualities of the same grade for the purpose of storing or delivering the same, nor shall he attempt to deliver grain of one grade for another, or in any way tamper with grain while in his possession or custody, with a view of securing any profit to himself or any other person; and in no case, even of grain stored in a separate bin, shall he be permitted to mix grain of different grades together while in store. He may, however, on request of the owner of any grain stored in a private bin, be permitted to dry, clean, or otherwise improve the condition or value of any such lot of grain; but in such case it shall only be delivered as such separate lot, or as the grade it was originally when received by him without reference to the grade it may be as improved by such process of drying or cleaning. Nothing in this section, however, shall prevent any warehouseman from moving grain while within his warehouse for its preservation or safe-keeping. *Id.* ch. 114, sec. 149.

Examination of grain and scales—Incorrect scales:—All persons owning property, or who may be interested in the same, in any public warehouse, and all duly authorized inspectors of such property, shall at all times, during ordinary business hours, be at full liberty to examine any and all property stored in any pubic warehouse in this state, and all proper facilities shall be extended to such person by the warehouseman, his agents and servants, for an examination; and all parts of public warehouses shall be free for the inspection and examination of any person interested in property stored therein, or of any

authorized inspector of such property. And all scales used for the weighing of property in public warehouses shall be subject to examination and test by any duly authorized inspector or sealer of weights and measures, at any time when required by any person or persons, agent or agents, whose property has been or is to be weighed on such scales—the expense of such test by an inspector or sealer to be paid by the warehouse proprietor if the scales are found incorrect, but not otherwise. Any warehouseman who may be guilty of continuing to use scales found to be in an imperfect or incorrect condition by such examination and test, until the same shall have been pronounced correct and properly sealed, shall be liable to be proceeded against as hereinafter provided. *Id.* ch. 114, sec. 150.

Grain must be inspected:—In all places where there are legally appointed inspectors of grain, no proprietor or manager of a public warehouse of Class B shall be permitted to receive any grain and mix the same with the grain of other owners, in the storage thereof, until the same shall have been inspected and graded by such inspector. *Id.* ch. 114, sec. 151.

Above section construed:—This act does not provide for the appointment of inspectors of Class B, hence above section inoperative until such inspectors are legally appointed. *Board of Trade* v. *The People*, 105 Ill. 382.

Assuming to act as inspector:—Any person who shall assume to act as an inspector of grain, who has not first been so appointed and sworn, shall be held to be an impostor, and shall be punished by a fine of not less than $50 nor more than $100 for each and every attempt to so inspect grain, to be recovered before a justice of the peace.

Misconduct of inspector—Influencing:—Any duly authorized inspector of grain who shall be guilty of neglect of duty, or who shall knowingly or carelessly inspect or grade any grain improperly, or who shall accept any money or other consideration, directly or indirectly, for any neglect of duty, or the improper performance of any duty as such inspector of grain; and any person who shall improperly influence any inspector of grain in the performance of his duties as such inspector, shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined in a sum not less than $100 nor more than $1,000, in the discretion

of the court, or shall be imprisoned in the county jail not less than three nor more than twelve months, or both, in the discretion of the court. *Revised Stats. Ill.*, 1912, Ch. 114, Sec. 152.

Owner, etc., dissatisfied with inspection—His rights:—In case any owner or consignee of grain shall be dissatisfied with the inspection of any lot of grain, or shall, from any cause, desire to receive his property without its passing into store, he shall be at liberty to have the same withheld from going into any public warehouse (whether the property may have previously been consigned to such warehouse or not), by giving notice to the person or corporation in whose possession it may be at the time of giving such notice; and such grain shall be withheld from going into store, and be delivered to him, subject only to such proper charges as may be a lien upon it prior to such notice. The grain, if in railroad cars, to be removed therefrom by such owner or consignee within twenty-four hours after such notice has been given to the railroad company having it in possession: *Provided*, such railroad company place the same in a proper and convenient place for unloading; and any person or corporation refusing to allow such owner or consignee to so receive his grain shall be deemed guilty of conversion, and shall be liable to pay such owner or consignee double the value of the property so converted. Notice that such grain is not to be delivered into store may also be given to the proprietor or manager of any warehouse into which it would otherwise have been delivered, and if, after such notice, it be taken into store in such warehouse, the proprietor or manager of such warehouse shall be liable to the owner of such grain for double its market value. *Id.* ch. 114, sec. 153.

Combination:—It shall be unlawful for any proprietor, lessee or manager of any public warehouse, to enter into any contract, agreement, understanding, or combination, with any railroad company or other corporation, or with any individual or individuals, by which the property of any person is to be delivered to any public warehouse for storage or for any other purpose, contrary to the direction of the owner, his agent, or consignee. Any violation of this section shall subject the offender to be proceeded against as provided in section 23 of this act. *Id.* ch. 114, sec. 154.

Suits:—If any warehouseman of Class A shall be guilty of a violation of any of the provisions of this act, it shall be lawful for any person injured by such violation to bring suit in any court of competent jurisdiction, upon the bond of such warehouseman, in the name of the people of the state of Illinois, to the use of such person. In all criminal prosecutions against a warehouseman, for the violation of any of the provisions of this act, it shall be the duty of the prosecuting attorney of the county in which such prosecution is brought, to prosecute the same to a final issue, in the name of and on behalf of the people of the state of Illinois. *Id.* ch. 114, sec. 155.

Warehouse receipt assignable:—Warehouse receipts for property stored in any class of public warehouses, as herein described, shall be transferable by the indorsement of the party to whose order such receipt may be issued, and such indorsement shall be deemed a valid transfer of the property represented by such receipt, and may be made either in blank or to the order of another. All warehouse receipts for property stored in public warehouses of Class C shall distinctly state on their face the brand or distinguishing marks upon such property. *Id. ch.* 114, sec. 156.

Above section construed:—There being no penalty for failure to place upon the warehouse receipts the distinguishing marks above provided for, the failure to do so will not render the receipt void in the hands of an assignee for value. *Hoffman* v. *Schoyer et al.* 143 Ill. 598.

Same—Effect of indorsement:—Indorsement and delivery of a warehouse receipt transfers the title to the stored property to the assignee and gives him the right of action for any breach of duty of which the warehouseman might be guilty respecting the goods while in the warehouseman's custody. *Sargent* v. *Central Warehouse Co.*, 15 Ill., App. 553; *Union National Bank* v. *Griswold*, 141, Ill. App. 464.

False receipts—Fraudulent removal:—Any warehouseman of any public warehouse who shall be guilty of issuing any warehouse receipt for any property not actually in store at time of issuing such receipt, or who shall be guilty of issuing any warehouse receipt in any respect fraudulent in its character, either as to its date or the quantity, quality, or inspected grade of such

property, or who shall remove any property from store (except to preserve it from fire or other sudden danger), without the return and cancellation of any and all outstanding receipts that may have been issued to represent such property, shall, when convicted thereof, be deemed guilty of a crime and shall suffer, in addition to any other penalties prescribed by this act, imprisonment in the penitentiary for not less than one, and not more than ten years. Restricted as to receipts issued before Oct. 8, 1871. L. 1871. 1872, p. 774. See "Criminal Code," ch. 38, sec. 124, 125, Revised Stats. Ill. 1912, ch. 114, sec. 157.

Above section construed:— *Held*, sections 124 and 125 of the criminal code did not impliedly repeal the above. *Sykes* v. *The People*, 127 Ill. 117.

Same—Warehouseman's receipt on his own goods—Section embraces all building:—Warehouse receipt issued by owner of his own grain in his own building and deposited as collateral for loan comes within above section. (124 and 125.) These sections include all buildings of every kind and character, in which goods, wares and merchandise are or may be stored, whether for hire or otherwise. *McReynolds* v. *People*, 230 Ill. 623, 634.

Common-law remedy saved:—Nothing in this act shall deprive any person of any common-law remedy now existing. Revised Stats. Ill. 1912, ch. 114, sec. 158.

Printed copy of act posted:—All proprietors or managers of public warehouses shall keep posted up at all times, in a conspicuous place in their business offices, and in each of their warehouses, a printed copy of this act. *Id.* ch. 114, sec. 159.

Repeal:—All acts or parts of acts inconsistent with this act are hereby repealed. *Id.* ch. 114, sec. 160.

Issuance and cancellation of receipts:—An act providing for the issuing and the cancellation of receipts for public warehouses or warehouses of Class A, or Class B, in the state of Illinois, and providing penalties for violation thereof. (Approved May 11, 1901. In force July 1, 1901. L. 1901, p. 320.)

Warehouse receipt—When to issue—What to contain—To be stamped and marked "registered for cancellation"—Penalty for delivering grain without notice from the registrar that

said receipts have been registered for cancellation—Penalty: —*Be it enacted by the People of the State of Illinois represented in the General Assembly:* That upon the receipt of any grain for storage in any public warehouse of Class A or Class B (in cities or counties where a chief grain inspector or deputy inspector has or shall be lawfully appointed), the said warehouseman shall issue or cause to be issued a receipt for the number of bushels, the kind, the grade of such grain, the owner thereof, and shall report within twenty-four (24) hours to the warehouse registrar the amount of said grain, the owner thereof, the number of the receipt issued therefor, the kind and grade of said grain; and that no grain shall be delivered from store from any such public warehouse of Class A or Class B (in cities or counties where a chief grain inspector or deputy inspector has or shall be lawfully appointed), for which, or representing which, any such receipt shall have been issued, except upon the return of said receipt stamped, or otherwise plainly marked by the warehouse registrar with the words "registered for cancellation," and the date thereof. And it shall be the duty of the warehouseman, after said receipts have been stamped and marked "registered for cancellation," and within twenty-four (24) hours after the last of said grain has been delivered, to report said receipts to the registrar cancelled; and any warehouseman, agent, clerk or servant failing to issue receipts for grain, when received as aforesaid, shall be subject to a fine of one hundred ($100) dollars for each offense. And any warehouseman, agent, clerk or servant so delivering any grain, where receipts have been issued as aforesaid, or inspector or person connected with the grain department, knowingly permitting said grain to be delivered without notice from the registrar that said receipts have been registered for cancellation, shall be deemed guilty of a crime, and upon conviction thehreof shall be fined an amount equal to the value of the property so delivered, or imprisonment in the penitentiary not less than one year nor more than ten years. Revised Stats. Ill. 1912, ch. 114, sec. 160*a*.

An Act to amend an act entitled "An act to regulate public warehouses and the warehousing and inspection of grain, and to give effect to article thirteen (13) of the constitution of the state," approved April 25, 1871, in force July 1, 1871, and to establish a committee of appeal, and prescribe their duties (Approved April, 1873. In force July 1, 1873.)

Commission to establish grades:— *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That the board of railroad and warehouse commissioners shall establish a proper number and standard of grades for the inspection of grain, and may alter or change the same from time to time: *Provided*, no modification or change of grades shall be made, or any new ones established, without public notice being given of such contemplated change, for at least twenty days prior thereto, by publication in three daily newspapers printed in each city containing warehouses of Class A: *And, provided, further*, that no mixture of old and new grades, even though designated by the same name or distinction, shall be permitted while in store. Revised Stats. Ill. 1912. ch. 114, sec. 161.

Committee of appeals:—Within twenty days after this act takes effect, the board of railroad and warehouse commissioners shall appoint three discreet and competent persons to act as a committee of appeals, in every city wherein is located a warehouse of Class A, who shall hold their office for one year and until their successors are appointed. And every year thereafter a like committee of appeals shall be appointed by said commissioners, who shall hold their office for one year and until their successors are appointed: *Provided*, said commissioners shall have power, in their decision, to remove from office any member of said committee at any time, and fill vacancies thus created by the appointment of other discreet persons. *Id.* ch. 114, sec. 162.

Appeals—Notices:—In all matters involving doubt on the part of the chief inspector, or any deputy inspector, as to the proper inspection of any lot of grain, or in case any owner, consignee or shipper of grain, or any warehouse manager, shall be dissatisfied with the decision of the chief inspector or any deputy inspector, an appeal may be made to said committee of appeal, and the decision of a majority of said committee shall be final. Said board of commissioners are authorized to make all necessary rules governing the manner of appeals as herein provided. And all complaints in regard to the inspection of grain, and all notices requiring the services of the committee of appeal, may be served on said committee, or may be filed with the warehouse registrar of said city, who shall immediately notify said committee of the fact, and who shall furnish said committee with such clerical assistance as may be necessary for the

proper discharge of their duties. It shall be the duty of said committee, on receiving such notice, to immediately act on and render a decision in each case. *Id.* ch. 114, sec. 163.

Committee of appeals—Oath—Bond—Who may serve on: —The said committee of appeals shall, before entering upon the duties of their office, take an oath, as in case of other inspectors of grain, and shall execute a bond in the penal sum of five thousand dollars; with like conditions as is provided in the case of other inspectors of grain, which said bonds shall be subject to the approval of the board of railroad and warehouse commissioners. *It is further provided,* that the salaries of said committee of appeal shall be fixed by the board of railroad and warehouse commissioners, and be paid from the inspection fund, or by the party taking the appeal, under such rules as the commission shall prescribe; and all necessary expenses incurred in carrying out the provisions of this act, except as herein otherwise provided, shall be paid out of the funds collected for the inspection service upon the order of the commissioners: *Provided,* that no person shall be appointed to serve on the committee of appeals who is a purchaser of, or receiver of grain, or other articles to be passed upon by said committee. (As amended by act approved June 26, 1885. In force July 1, 1885, L. 1885, p. 178.) *Id.* ch. 114, sec. 164.

"Registered for collection"—Inspection fees:—No grain shall be delivered from store from any warehouse of Class A, for which or representing which warehouse receipts shall have been issued, except upon the return of such receipts stamped or otherwise plainly markd by the warehouse register with the words "registered for collection" and the date thereof; and said board of commissioners shall have power to fix the rates of charges for the inspection of grain, both into and out of warehouse; which charges shall be a lien upon all grain so inspected, and may be collected of the owners, receivers or shippers of such grain, in such manner as the said commissioners may prescribe. *Id.* ch. 114, sec. 165.

Repeal:—Section 13 of the act to which this is an amendment, is hereby repealed; *Provided,* the provisions contained in said section shall remain in force until the grades for the inspection of grain shall have been established by the commis-

sioners, as provided in section 1 of this act. (Grades fixed by commissioners, July 1, 1873.) *Id.* ch. 114, sec. 166.

Appointment—Term:—*Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That a commission which shall be styled "Railroad and Warehouse Commission," shall be appointed as follows: Within twenty days after this act shall take effect, the governor shall appoint three persons as such commissioners, who shall hold their office until the next meeting of the general assembly, and until their successors are appointed and qualified. At the next meeting of the general assembly, and every two years thereafter, the governor, by and with the advice and consent of the senate, shall appoint three persons as such commissioners, who shall hold their offices for the term of two years from the first day of January in the year of their appointment, and until their successors are appointed and qualified. *Id.* ch. 114, sec. 167.

Qualifications:—No person shall be appointed as such commissioner who is at the time of his appointment in any way connected with any railroad company, other common carrier or warehouse or who is directly or indirectly interested in any stock, bond or other property of, or is in the employment of any railroad company other common carrier or, warehouseman; and no person appointed as such commissioner shall during the term of his office, become interested in any stock, bond or other property of any railroad company, other common carrier or warehouse, or in any manner be employed by or connected with any railroad company, other common carrier or warehouseman. The governor shall have power to remove such commissioner at any time in his discretion. *Id.* ch. 114 sec. 168.

Oath—Bond:—Before entering upon the duties of his office, each of the said commissioners shall make and subscribe, and file with the secretary of state, an affidavit, in the following form: I do solemnly swear (or affirm as the case may be), that I will support the constitution of the United States and the constitution of the state of Illinois, and that I will faithfully discharge the duties of the office of commissioner of railroads and warehouses, according to the best of my ability. And shall enter into bonds, with security to be approved by the governor, in the sum of $20,000, conditioned for the faithful performance of his duty as such commissioner. *Id.* ch. 114, sec. 169.

Statement by warehouseman:—It shall be the duty of every owner, lessee and manager of every public warehouse in this state to furnish in writing under oath, at such times as such railroad and warehouse commissioners shall require and prescribe, a statement concerning the condition and management of his business as such warehouseman. *Id.* ch. 114, sec. 175.

Report by commissioners—Examination:—Such commissioners shall, on or before the first day of December in each year, or oftener if required by the governor to do so, make a report to the governor of their doings for the preceding year, containing such facts, statements and explanations as will disclose the actual workings of the system of transportation of persons or property by common carriers within this state and of the warehouse business in their bearings upon the business and prosperity of the people of this state, and such suggestions in relations thereto as to them may seem appropriate, and particularly first, whether in their judgment the railroads can be classified in regard to rate of fare and freight to be charged upon them, and if so, in what manner; second, whether a classification of freight can also be made, and if so, in what manner. They shall also, at such times as the governor shall direct, examine any particular subject connected with the condition and management of such railroads, other common carriers and warehouses, and report to him in writing their opinion thereon with their reasons therefor. *Id.* ch. 114, sec. 176.

Examinations of railroad and warehouses—Suits:—Said commissioner shall examine into the conditions and management, and all other matters concerning the business of railroads, other common carriers and warehouses in this state so far as the same pertains to the relation of such roads, other common carriers, and warehouses to the public and to the accommodation and security of persons doing business therewith, and whether such railroad companies, other common carriers, and warehouses, their officers, directors, managers, lessees, agents and employees, comply with the laws of this state now in force, or which shall hereafter be in force concerning them. And whenever it shall come to their knowledge, either upon complaint or otherwise, or they have reason to believe that any such law or laws have been or are being violated, they shall prosecute or cause to be prosecuted

all corporations or persons guilty of such violation. *Id.* ch. 114, sec. 177.

Cancellation of warehouse licenses:—Said commissioners are hereby authorized to hear and determine all applications for the cancellation of warehouse licenses in this state which may be issued in pursuance of any laws of this state, and for that purpose to make and adopt such rules and regulations concerning such hearing and determination as may, from time to time, by them be deemed proper. And if, upon such hearing, it shall appear that any public warehouseman has been guilty of violating any law of this state concerning the business of public warehousemen, said commissioners may cancel and revoke the license of said public warehouseman, and immediately notify the officer who issued such license of such revocation and cancellation, and no person whose license as a public warehouseman shall be cancelled or revoked, shall be entitled to another license or to carry on the business in this state of such public warehouseman, until the expiration of six months from the date of such revocation and cancellation, and until he shall have again been licensed: *Provided*, that this section shall not be so construed as to prevent any such warehouseman from delivering any grain on hand at the time of such revocation or cancellation of his said license. And all licenses issued in violation of the provisions of this section shall be deemed null and void. Rev. Stats. Ill. 1912, ch. 114, sec. 178.

Power to examine books, etc.:—The property, books, records, accounts, papers and proceedings of all such railroad companies, other common carriers, and all public warehousemen, shall at all times, during business hours, be subject to the examination and inspection of such commissioners, and they shall have power to examine, under oath or affirmation, any and all directors, officers, managers, agents and employees of any such railroad corporation or other common carrier, and any all owners, managers, lessees, agents and employees of such public warehouses and other persons, concerning any matter relating to the condition and management of such business. * * * *Id.* ch. 114, sec. 179.

May examine witnesses, etc.:—In making any examination as contemplated in this act for the purpose of obtaining informa-

tion, pursuant to this act, said commissioners shall have the power to issue subpoenas for the attendance of witnesses, and may administer oaths. In case any person shall willfully fail or refuse to obey such subpoena, it shall be the duty of the circuit court of any county, upon application of the said commissioners, to issue an attachment for such witness, and compel such witness to attend before the commissioners, and give his testimony upon such matters as shall be lawfully required by such commissioners; and the said court shall have power to punish for contempt, as in other cases for refusal to obey the process and order of such court. *Id.* ch. 114, sec. 180.

Penalty against witness:—Any person who shall willfully neglect or refuse to obey the process of subpoena issued by said commissioners, and appear and testify as therein required, shall be deemed guilty of a misdemeanor, and shall be liable to an indictment in any court of competent jurisdiction, and on conviction thereof shall be punished for each offense, by a fine of not less than $25 nor more than $500, or by imprisonment of not more than thirty days, or both, in the discretion of the court before which such conviction shall be had. *Id.* ch. 114, sec. 181.

Penalty against railroad companies, other common carriers, warehousemen, etc.:—Every railroad company or other common carrier, and every officer, agent or employee of any railroad company, or other common carrier, and every owner, lessee, manager or employee of any warehouse, who shall willfully neglect to make and furnish any report required in this act at the time required, or who shall willfully and unlawfully hinder, delay or obstruct said commissioners in the discharge of the duties hereby imposed upon them, shall forfeit and pay a sum of not less than $100 nor more than $5,000 for each offense, to be recovered in an action of debt in the name of the People of the State of Illinois; and every railroad company or other common carrier, and every officer, agent or employee of any such railroad company or other common carrier and every owner, lessee, manager or agent or employee of any public warehouse, shall be liable to a like penalty for every period of ten days it or he shall willfully neglect or refuse to make such report. *Id.* ch. 114, sec. 182.

Attorney general and state's attorney to prosecute suits:—It shall be the duty of the attorney general and the state's at-

torney in any county, on the request of said commissioners, to institute and prosecute any and all suits and proceeding which they or either of them shall be directed by said commissioners to institute and prosecute for a violation of this act, or any law of this state concerning railroad companies or other common carriers, or warehouses, the officers, employees, owners, operators or agents of any such companies, common carriers, or warehouses. *Id.* ch. 114, sec. 183.

In name of people—Pay—Qui tam actions:—All such prosecution shall be in the name of the people of the state of Illinois, and all moneys arising therefrom shall be paid into the state treasury by the sheriff or other officer collecting the same; and the state's attorney shall be entitled to receive for his compensation, from the state treasury on bills to be approved by the chairman of the commission, and by the governor, a sum not exceeding ten per cent of the amount received and paid into the state treasury as aforesaid: *Provided*, this act shall not be construed so as to prevent any person from prosecuting any *qui tam* action as authorized by law and of receiving such part of the amount recovered in such action as is or may be provided under any law of this state. *Id.* ch. 114, sec. 184.

Rights of individuals saved—This act shall not be so construed as to waive or affect the right of any person injured by the violation of any law in regard to railroad companies, other common carriers or warehouses, from prosecuting for his private damages in any manner allowed by law. *Id.* ch. 114, sec. 185.

An act to provide that the railroad and warehouse commission may keep and use a common seal for the authentication of its acts, records and proceedings. (Approved June 19, 1891. In force July 1, 1891, L. 1891, p. 185.)

Seal—How records, etc., authenticated:—*Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That the railroad and warehouse commission of this state may, for the authentication of its records, process and proceedings, adopt, keep and use a common seal, of which seal judicial notice shall be taken in all courts of this state; and any process, writ, notice or other paper which the said commission may be authorized by law to issue shall be deemed sufficient if signed by the secretary of said commission and authenticated by such seal; and all acts, orders, proceedings, rules of inspection,

entries, minutes, schedules and records of said commission may be proved in any court of this state by a copy thereof, certified to by the secretary of said commission, and with the seal of said commission attached. *Id.* ch. 114, sec. 185½.

Weigh-master—Appointment of:—*Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That there shall be appointed by the Railroad and Warehouse Commissioners in all cities where there is state inspection of grain, a state weigh-master and such assistants as shall be necessary. *Id.* ch. 114, sec. 186.

Duties of:—Said state weigh-master and assistants shall, at the places aforesaid supervise and have exclusive control of the weighing of grain and other property which may be subject to inspection, and the inspection of scales and the action and certificate of such weigh-master and assistants in the discharge of their aforesaid duties shall be conclusive upon all parties in interest. *Id.* ch. 114, sec. 187.

Fix fees:—The Board of Railroad and Warehouse Commissioners shall fix the fees to be paid for the weighing of grain or other property, which fees shall be paid equally by all parties interested in the purchase and sale of the property weighed, or scales inspected and tested. *Id.* ch. 114, sec. 188.

Weigh-master — Qualifications — Bond — Compensation:—Said state weigh-master and assistants shall not be a member of any board of trade or association of like character; they shall give bonds in the sum of five thousand dollars ($5,000) conditioned for the faithful discharge of their duties, and shall receive such compensation as the Board of Railroad and Warehouse Commissioners shall determine. *Id.* ch. 114, sec. 189.

May adopt rules:—The Railroad and Warehouse Commissioners shall adopt such rules and regulations for the weighing of grain and other property as they shall deem proper. *Id.* ch. 114, sec. 190.

Neglect of duty—Penalty:—In case any person, warehouseman or railroad corporation, or any of their agents or employees, shall refuse or prevent the aforesaid state weigh-master or either of his assistants from having access to their scales, in the regular performance of their duties in supervising and weighing of any grain or other property in accordance with the tenor and mean-

ing of this act they shall forfeit the sum of one hundred ($100) dollars for each offense, to be recovered in an action of debt, before any justice of the peace, in the name of the people of the state of Illinois; such penalty or forfeiture to be paid to the county in which the suit is brought, and shall also be required to pay all costs of prosecution. *Id.* ch. 114, sec. 191.

Fraudulent receipts—Issuing by warehousemen and others: —Whoever fraudulently makes or utters any receipt, or other written evidence of the delivery or deposit of any grain, flour, pork, wool, salt, or other goods, wares or merchandise, upon any wharf or place of storage, or in any warehouse, mill, store or other building, when the quantity specified therein has not in fact been delivered or deposited as stated in such receipt or other evidence of the delivery or deposit thereof, and is not, at the time of issuing the same still in store, and the property of the person to whom or to whose agent the receipt is issued, or for the whole or any part of which any other receipt is outstanding, or uncancelled, shall be imprisoned in the penitentiary not less than one nor more than ten years. *Id.* ch. 38, sec. 124.

Removal of warehouse goods:—Whoever, having given any such receipt or written evidence of deposit or storage as is specified in the preceding section, or being in the possession or control of such property, shall sell, incumber, ship, transfer, or in any manner remove from the place of storage, or allow the same to be done, any such grain, flour, pork, wool, salt, or other goods, wares and merchandise, without the written consent of the holder of such receipt or other evidence of deposit or storage, except in cases of necessity for the purpose of saving such property from loss or damage by fire, flood or other accident, shall be imprisoned in the penitentiary not less than one nor more than ten years. *Id.* ch. 38, sec. 125.

Embezzlement by commission merchants and others:—If any warehouseman, storage, forwarding or commission merchant, or other person selling on commission, or his agent, clerk or servant, shall convert to his own use any fruit, grain, flour, beef, pork or other property, or the proceeds or avails thereof, without the consent of the owner thereof, or shall fail to pay over the avails or proceeds thereof, less his proper charges, on demand by the person entitled to receive the same, or his duly

authorizd agent, he shall be fined not exceeding $1,000, or confined in the county jail not exceeding one year, or both, and shall be liable to the person injured in double the value of the property or amount of the money so converted. *Id.* ch. 38, sec. 78.

Safe deposit companies—Boxes subject to inspection by state treasurer and attorney general upon death of lessor—Penalty:—If a foreign executor, administrator or trustee shall assign or transfer any stock or obligations in this state standing in the name of the decedent, or in trust for a decedent, liable to any such tax, the tax shall be paid to the treasurer of the proper county on the transfer thereof. No safe deposit company, trust company, corporation, bank or other institution, person or persons having in possession or under control securities, deposits, or other assets belonging to or standing in the name of a decedent who was a resident or non-resident, or belonging to, or standing in the joint names of such a decedent and one or more persons, including the shares of the capital stock of, or other interest in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer herein provided, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or to the survivor or survivors when held in the joint names of a decedent and one or more persons, or upon their order or request unless notice of the time and place of such intended delivery or transfer be served upon the state treasurer and attorney general at least ten days prior to said delivery or transfer; nor shall any such safe deposit company, trust company, corporation, bank or other institution, person or persons, deliver or transfer any securities, deposits or other assets belonging to or standing in the name of a decedent, or belonging to, or standing in the joint names of a decedent and one or more persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, without retaining a sufficient portion or amount thereof to pay any tax or interest which may thereafter be assessed on account of the delivery or transfer of such securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corpora-

tion, bank or other institution making the delivery or transfer, under the provisions of this article, unless the state treasurer and attorney general consent thereto in writing. And it shall be lawful for the state treasurer, together with the attorney general, personally or by representatives, to examine said securities, deposits or assets at the time of such delivery or transfer. Failure to serve such notice or failure to allow such examination, or failure to retain a sufficient portion or amount to pay such tax and interest as herein provided shall render said safe deposit company, trust company, corporation, bank or other institution, person or persons liable to the payment of the amount of the tax and interest due or thereafter to become due upon said securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, and in addition thereto, a penalty of one thousand dollars; and the payment of such tax and interest thereon, or of the penalty above described, or both, may be enforced in an action brought by the state treasurer in any court of competent jurisdiction. *Id.* ch. 120, sec. 374.

Above section construed—Held to be constitutional:—In a test case the above section, in a very elaborate and carefully considered opinion, held not to be violative of either the state or federal constitution. *National Safe Deposit Co.* v. *Stead*, 250 Ill. 584. Aff'd by Sup. Ct. U. S., Jan. 5, 1914, No. 138 Oct. Term 1913, not yet reported.

NOTE: Under a statute in New York, the same as the above, it was held that a safe deposit company which failed to notify the state official prior to allowing a safe to be opened which it had rented to two persons one of whom had died was not liable to the penalty named in the statute because the contents of such safe were not "in possession or under control" of such safe deposit company. People of the State of New York by Glynn, Comptroller v. Mercantile Safe Deposit Co., 143 N. Y. Sup. 849.

DECISIONS AFFECTING WAREHOUSEMEN

A.

Bailment and sale—The depositing of grain in a public warehouse and the mixing thereof with other grain is a bailment:—If grain be deposited in a public warehouse in this state to be mixed with the grain of other persons, under the warehouse act, such depositary becomes the owner of an equal quantity of grain of the same kind and quality as that deposited and the title to such deposited grain does not pass to the warehouseman.

In short, it is a bailment only and not a sale. *National Bank of Pontiac* v. *Langan*, 28 Ill. App. 401; *Meadowcraft* v. *German National Bank*, 95 Ill. 124; *Canadian Bank* v. *McCrea*, 106 Ill. 281.

Same—When sale and not a bailment—Private warehousemen—Receipt construed:—Where plaintiff delivered wheat to the defendant, a mill-owner, and received therefor a receipt in which it was stated that the defendant had received the wheat and that he was to take the market price for the same whenever he saw fit to sell, it was *held* that this was not a contract of storage but a sale of the wheat and that the title passed to the mill-owner. The fact that the wheat was mixed with other wheat in the mill does not change the case. The wheat being subsequently destroyed by fire, the defendant was liable for the value thereof. *Ives* v. *Hartley*, 51 Ill. 520; *Lonergan* v. *Stewart*, 55 Ill. 44.

Same—Sale—Inability to return same grain—Destruction by fire:—A warehouseman received grain without any special contract from which it could be shown whether it was a bailment or a sale. The evidence showed that there was a notice posted in the warehouse, in which it was stated that grain would be received for storage for one month free of charge and other statements from which it would be inferred that the transaction was a bailment; but the evidence further showed that the warehouseman disposed of the grain and counted on being able to subsequently purchase a sufficient quantity of grain in event that the depositor made a demand for the same or gave to the warehouseman an order to sell. Subsequently, a fire occurred and the warehouse and contents were destroyed. In an action against the warehouseman for the value of the grain, it was *held* that he was liable on the ground that the transaction was a sale and not a bailment. *Cloke* v. *Dowse*, 38 Ill. App. 252, aff'd 137 Ill. 393.

Same—Destruction by fire—Evidence considered—Plaintiff deposited grain in defendant's mill under an agreement that the same might be mixed and used but that defendant should keep on hand an equal amount of the same grade. The mill and contents were destroyed by fire. An action was brought for the value of the wheat. The evidence and instructions were considered and held sufficient to suport a verdict for defendant. *Mayer* v. *Gersbacker*, 207 Ill. 296.

Same—The principle determining when it is a bailment and when a sale:—The principle determining when the transaction constitutes a bailment and when a sale is as follows: When the identical thing delivered is to be restored, though in an altered form, the contract is one of bailment and the title to the property is not changed, but when there is no obligation to restore the specific article and the warehouseman is at liberty to restore another thing of equal value he becomes the debtor to make the return, and the property is changed—it is a sale. Evidence was received to prove a custom among warehousemen showing that depositors who stored grain never expected to receive the identical grain back, but to get their money for the same at the market price on the day on which the demand was made. *Lonergan* v. *Stewart,* 55 Ill. 44.

Same—Special agreement with warehouseman—Instruction to jury—Bailment:—It was perfectly proper for one to make an agreement with his warehouseman for the mixing of the grain, by which the title might be determined; this entirely independent of the constitution and the statutes relating to warehousemen. The evidence as to the terms of the agreeemnt was conflicting, the defendant testifying positively to facts which would make the agreement one of bailment, the plaintiff's testimony was to the effect that the transaction constituted a sale. The court refused to give an instruction prayed for by defendant to the effect that if they believed his testimony they should find for him, this *held* reversible error. *Ardinger* v. *Wright,* 38 Ill. App. 98.

B.

Ordinary care—Grain purchased for customers—Different rule:—Where warehousemen purchased grain for others, which was subsequently stored in their warehouse, the following instruction to the jury in an action brought against the warehousemen for the recovery of the value of the grain, *held* correct; that, by the terms of the receipt given by the defendants to the plaintiff, the defendants became the bailors of the plaintiff and were only bound to take reasonable care of the grain and have it ready for delivery for a reasonable time, and if the same was injured without the negligence of the defendant, they were not responsible for such injury, and that they had a right to charge storage after a reasonable time, if the jury believed

from the evidence that the plaintiff failed to take it away within a reasonable time after being notified to do so. *Myers et al. v. Walker*, 31 Ill. 353; *St. Louis, A. & T. H. R. R. Co. v. Montgomery*, 39 Ill. 335; *Chicago & A. R. R. v. Scott*, 42 Ill. 132.

Doing business under trade name—Liable as partners:—Persons doing a warehouse business under a trade name indicating a corporation are liable as partners. *Union National Bank v. Griswold*, 141 Ill. App. 464, 469.

Who a public warehouseman:—The fact that one keeps a public warehouse is of itself notice to the world that the property therein stored is held for others, at least sufficient to put parties interested on inquiry. *National Bank of Pontiac v. Langan*, 28 Ill. App. 401; *Broadwell v. Howard*, 77 Ill. 305.

Warehousemen—Duty to the public—Public agencies—Prohibited from speculation in grain stored in their own warehouses:—The evidence showed that the defendant was the owner of a large warehouse in the city of Chicago, doing business as a public warehouseman under the warehouse act of 1871, and amendments thereto, that it was his practice to purchase grain in large quantities, overbidding legitimate grain dealers to the extent, in many instances, of one fourth of one cent per bushel, and thereafter disposing of the same by under-selling such bidders and obtaining his profit by virtue of his storage charges. The effect was to practically prohibit competition and resulted in the warehousemen becoming the owners of a large proportion of the grain in the market. It was *held* that public warehouses, established under the law, were public agencies and the defendant as a licensee pursued a public employment and that he was therefore charged with a public duty; *further*, that his course of dealing was inconsistent with the safe performance of his important duty to the public. The evidence failed to sustain the contention of the defendant that, at the time of the passage of the warehouse act, it was the custom among owners of large warehouses to store their own grain therein. *Central Elevator Co. v. The People*, 174 Ill. 203.

Approaches to warehouses—Not bound to a high degree of care—Approaches to railroad terminals distinguished:—A warehouseman is not obliged to exercise as high a degree of care as a common carrier in providing for safe approaches to his ware-

house. It would not be consistent with the analogy of the law to hold that a warehouseman, who is only held to ordinary care in conducting his business, should be held to an extraordinary care in protecting persons in coming to his warehouse to transact business with him. He is liable only for ordinary care in the structure of his warehouse and appurtenances. *Buckingham* v. *Fisher*, 70 Ill. 121.

Degree of liability—Real object of the transaction:—Where plaintiff hired the defendant, a warehouseman, to remove her goods and store them, and several months thereafter to return them to her, it was *held* that this was clearly a contract of storage and that the defendant could not be held to the liability of a common carrier. Storage was the main thing in contemplation of the parties and the removal of the goods to the warehouse and the return to the bailor, in the same city, were necessarily incidental to it. The defendant was obliged to exercise only ordinary care. *Armfield* v. *Humphrey*, 12 Ill. App. 90.

Conversion—Action in assumpsit—Tort waived:—If warehousemen have wrongfully converted property intrusted to their care the bailor has the right to waive the tort and sue in assumpsit for the money received on the sale of the grain. *Ives* v. *Hartley*, 51 Ill. 520; *Leonard* v. *Dunton*, 51 Ill. 482.

Change of ownership—Warehouse conducted by bank—Same—Liability for conversion—Ultra vires no defense:—The defendant, a national bank, took possession of a warehouse, after default in the payment of obligations to it, as security for the payment of such debts. The refusal to deliver grain stored therein, to the holders of the warehouse receipts, constituted a conversion for which the bank was liable. The fact that, under the charter of the bank, it was not authorized to conduct a warehouse business, is no defense. The question is whether or not there was a conversion, and, if there were, it maks no difference whether the bank was authorized by its charter to conduct a warehouse business or not. *German National Bank* v. *Meadowcroft*, 4 Ill. App. 630, aff'd 95 Ill. 124.

Pleading—Averment to furnish storage:—The averment that the appellees had kept and performed all the covenants on their part and at all times were willing to furnish storage for the company to the amount of one million bushels, is not an averment, or

the equivalent of an averment, that they were at all times willing and ready to furnish the storage that may be necessary for a business of five millions of bushels in a year. Therefore, a demurrer to a petition containing the above allegation should have been sustained. *Chicago, M. & St. P. Ry. Co.* v. *Hoyt*, 37 Ill. App. 64; *Same* v. *Same*, 50 Ill. 583; aff'd 151 Ill. 409; *Same* v. *Same*, 44 Ill. App. 48.

Warehouse commission—Action of, in depriving a warehouseman of his license, reviewable by the courts—Certiorari:—Where the Railroad and Warehouse Commission of Illinois had revoked the license of defendants, alleging that they violated the law of the state, concerning the business of public warehousemen, it was contended on behalf of the commission, that its action in investigating the facts and determining that there had been a violation of the law by the warehouseman was a judicial act involving the exercise of judicial discretion, and, therefore, was not reviewable by the courts. The court *held* that this contention could not be maintained and, therefore, it reviewed on certiorari the evidence of the Railroad and Warehouse Commission where it had revoked the license of the warehouseman for the alleged violation of law. *Cantrell et al.* v. *Scaverns*, 64 Ill. App. 273; aff'd 168 Ill. 165.

Same—Warehouseman storing his own grain prohibited—No implication of the legality of such practice derived from inaction of warehouse commission:—It appeared that, after the act of 1871, which, among other things, provided that warehousemen should not deposit their own grain in their warehouses; that the practice of doing so was continued, and it further apeared that the Warehouse Commission knew of the continuance of this practice. It was *held* that the commission was derelict in its duty, that it should have brought such cases to the attention of the attorney general for prosecution, and that the contention that this inaction on the part of the commission amounted to a construction of the law that such practice was legal, could not be sustained. *Central Elevator Co.* v. *The People*, 174 Ill. 203.

Same—The right of the Railroad and Warehouse Commission to inspect grain a legal one—Police power:—In an action by the people against one who had formerly been chief inspector of grain, appointed by the Railroad and Warehouse Commission, for the recovery of fees collected by him, which he had appropriated

to his own use, it was *held* that such appointment having been made by said commission, pursuant to authority conferred upon it by the act of 1871, by which it was created, was a proper delegation of police power by the legislature, and further, that the provisions made by the Railroad and Warehouse Commission, in regard to the fees to be charged for such a collection was a proper delegation of power by the legislature. *The People* v. *Harper et al.*, 91 Ill. 357.

Inspectors of grain—"Legally appointed inspectors" defined:—The warehouse law of 1871, as amended by act of 1897, provided that any person who shall assume to act as an inspector of grain, who has not first been so appointed and sworn, shall be held to be an imposter, etc., and subject to a fine therein provided. It was *held* that such inspectors, in order to be legally appointed must have received their commission pursuant to the terms of the amendatory act of 1879 read in connection with the original warehouse law of 1871. Public inspection being authorized under section 14, private inspection thereupon became unlawful. *Dutcher* v. *The People*, 11 Ill. App. 312.

Evidence—Delivery—Storage in warehouse—Custom:—Delivery pursuant to a contract of sale cannot be shown by storage in warehouse, nor will evidence be received to show that such was the custom when it has been proved that the party claiming the property had no knowledge of any such custom. *Larson* v. *Johnson*, 42 Ill. App. 198.

Same—Recitals in receipts given by draymen:—The court instructed the jury that statements contained in the receipts signed for the warehouse company by the draymen or teamsters, that the flour when received by them was in good condition, were not binding on the warehouse company as admissions. Further, that such receipts could only be considered as evidence of the course of business employed by the warehouseman in the transactions to which they relate. This instruction was held to be correct. *Central Warehouse Co.* v. *Sargeant*, 40 Ill. App. 438.

C.

Safe deposit boxes—Relation to boxholders—Duty on death of:—Where a safe deposit company leases a safe deposit box or safe and the lessee takes possession of the box, and places therein his securities or other valuables, the relation of bailee

and bailor is created between the parties as to such property of which the company is then in legal custody and control. The fact that the company does not know the character of the property deposited does not change the relation. Upon the death of the lessee the duty devolves upon the company to hold the contents of the box and to deliver them to such persons only, to whom they belong or to whom the law directs they shall be delivered, and such delivery must be made at the company's peril. *National Safe Deposit Co.* v. *Stead*, 250 Ill. 584. Aff'd by Sup. Ct. U. S., Jan. 5, 1914, No. 138 Oct. Term 1913, not yet reported.

Same—Negligence and ordinary care—Bailee liable:—Defendant kept for rent, boxes in a safe deposit vault owned by him; plaintiff rented a box and deposited therein certain moneys. While plaintiff was ill, which defendant knew, two persons presented the key to the box together with a power of attorney alleged to have been signed by plaintiff and were permitted access to the box. Defendant did not require identification of the two persons, or take the name of the notary public before whom it purported to have been acknowledged; or require the power of attorney to be surrendered. In signing a vault ticket these persons misspelled plaintiff's name. When plaintiff returned and complained of the loss, defendant stated that it was impossible for the money to have been lost as only plaintiff had the key, when in fact ten days previous defendant had permitted, as above stated, access to the box. *Held*, that the jury was justified in finding that defendant had not exercised such ordinary care and caution as the law requires. That defendant's neglect to require identification of the persons; to retain the power of attorney; to retain the name of the notary, and defendant's knowledge that plaintiff was in the hospital, tended to show not only want of ordinary care, but actual negligence. Also held that it was proper to show as corroborative evidence the source whence plaintiff obtained the money claimed to have been lost. Judgment for plaintiff for $4,480 affirmed. *Mayer* v. *Brensinger*, 180 Ill. 110, affirming 74 Ill. App. 475.

Same—Reasonable care—Duty of company:—What constitutes reasonable care in the particular case depends upon all the circumstances, including the nature of the company's undertaking, the confidence which it invites, and the value and character of the deposit. A safe deposit company holds out to the public the implied agreement that property placed in its custody

will be protected, so far as reasonable human foresight will permit, from the ordinary dangers to which valuables are exposed through the cupidity and daring of those who are always on the lookout to possess themselves of the property of others by fraud or criminal violence. It is for the jury to determine whether permitting a person other than the owner to obtain access to the box "by proper keys and a similarity of signatures" under the conditions in evidence, was negligence and that it was *prima facie* evidence of such negligence they are surely justified in concluding. *Masonic Temple Safety Deposit Co.* v. *Langfelt*, 117 Ill. App. 652, 656.

Same—Ordinary care—Evidence:—Plaintiffs rented a safe deposit box and kept therein various sums of money. In an action against the company for the loss of certain money claimed to have been in the box and lost or taken therefrom, held that in the absence of a special contract, the safe deposit company must exercise at least ordinary care. That it was proper to permit the defendant to introduce as evidence of its care, the testimony of a room man whose duty it was to examine the rooms occupied by depositors when examining contents of boxes, after depositors had left them, as to whether or not anything had been left, and as to his duty in that connection. Also that it was proper to permit evidence on part of defendant that when it became necessary to open a box the keys to which had not been surrendered, it would have a locksmith pick or break the lock. Judgment for defendant affirmed. *Bauman* v. *National Safe Deposit Co.*, 124 Ill. App. 419.

Same—When not attached to, do not become part of the realty:—During the occupation of rented quarters by a safe deposit company including a large number of boxes it added at its own cost over two thousand boxes to the equipment. The additional boxes were not attached to the original boxes nor the realty in any manner save by their weight. *Held*, the safe deposit company at the expiration of its lease had the right to remove such additional boxes as they had not become fixtures to the real estate nor trade fixtures. *Merchants Loan & T. Co.* v. *Merchants Safe Deposit Co.*, 167 Ill. App. 315.

H.

Storage charges—Failure to pay—Demand:—It apeared from the evidence that the defendant, a warehouseman, received wheat

for storage, for which there should be no charge for a short time in order that the plaintiff might have the opportunity to remove the same. The warehouseman also agreed to deliver the wheat upon demand by the owner. In the trial of the case for the recovery of the wheat or the value thereof, it was *held* that it was error for the court to instruct the jury that, if it found that the plaintiff had not offered to pay a reasonable charge before suit brought, it should find for the defendant. The appellate court held that plaintiff was entitled to judgment for the value of the wheat and that the defendant was, at most, entitled to a deduction from such amount equivalent to a reasonable charge for storage. *Leonard* v. *Dunton et al.*, 51 Ill. 482.

Same—Liability for—Warehouse receipt:—Corn was removed from a warehouse by the assignee of the warehouse receipt; in an action against him for the recovery of the storage charges, it was *held* that although the lien against the corn for the charges was gone, the warehouseman could still hold such assignee personally responsible therefor. Where one accepts a warehouse receipt he, at the same time, assumes liability to pay storage charges accrued against property represented thereby. *Cole* v. *Tyng et al.*, 24 Ill. 100.

Lien—Not lost by fraudulent issue of receipt:—The mere fact that a warehouseman fraudulently issues receipts for goods not on store with him does not deprive him of his lien for storage charges against other goods in his possession. *Low* v. *Martin*, 18 Ill. 286.

Storage charges—Sale for:—A warehouseman in order to enforce his lien for storage charges must proceed in the manner prescribed by law. A sale made otherwise will render him liable for conversion. *Van Buren S. & V. Co.* v. *Mann*, 139 Ill. App. 652.

Same—Not lost by sale of property:—The charges of a warehouseman are a first lien upon the property and are not affected by a sale of the property though such sale may be void. *Gerold* v. *Guttle*, 106 Ill. App. 630.

Same—When goods are surrendered only lien allowed will be that stipulated for:—At the time of the disastrous fire in Chicago there were more than 1,000,000 bushels of grain stored in the warehouses, a large proportion of which was destroyed. The Board of Trade, with the consent of the warehousemen, took

possession of all wheat remaining in the warehouses immediately after the fire, the warehousemen reserving a lien of two cents per bushel for storage. The grain was sold, and after the proceeds were obtained the warehousemen claimed an amount in addition to the sum agreed upon for storage. It was *held* that they were entitled to but two cents per bushel less the expense of preserving it. The manner in which the warehousemen released the property constituted a waiver of all liens thereon except such as were expressly reserved by the stipulation existing before the sale. *Board of Trade* v. *Buckingham et al.*, 65 Ill. 72.

Same—Lost by parting with the goods, not revived if possession be again obtained:—The court ruled that, where goods were redelivered by a warehouseman to the consignee upon receipt of the note of the consignee for the freight due, that the lien which the warehouseman held was lost and that when the property again came into possession of the warehouseman, there was no revival of the lien. The above ruling was *held* correct. *Hale* v. *Barrett*, 26 Ill. 195.

Same—Attachment of as property of warehouseman—Quaere? —If paid to sheriff he liable therefor to attaching plaintiff:—In an action against a sheriff for misconduct it was shown that plaintiff had sued a warehouse company and had caused to be placed in the sheriff's hands a writ of attachment against such warehouse company. The sheriff levied not only on the property of the warehouse company but also on all its right, title and interest in the stored property upon the theory that the company had a lien thereon for its storage charges and loans and advances made thereon. The sheriff released to the owners the goods he thus held upon the payment of accrued storage charges and advances. By these means the sheriff acquired possession of a considerable sum of money. Subsequently and without plaintiff's knowledge the sheriff paid such sum over to a creditor of the warehouse company upon that company's order to do so. It was held it was unnecessary to determine in this case whether the levy upon accrued storage charges was proper because the warehouse company had waived objection thereto by giving an order to the sheriff in respect to the sums collected for such charges; thus acknowledging such moneys to belong to it and further because the court found there had been a dereliction of duty on the part of the sheriff after he had collected these

moneys. It was the duty of the sheriff to attach these moneys in his own hands for plaintiff's benefit and his parting with them under the circumstances stated rendered him liable to the plaintiff therefor. *First National Bank of Chicago* v. *Hanchett,* 126 Ill. 400.

Contract between warehouseman and railroad company—Inability to store amount of grain offered—Reasonable construction of contract:—A railroad company agreed with a warehouseman that the "total amount of grain received at its elevator shall be at least 5,000,000 bushels on the average for each year," during the term of its lease. It appeared from the evidence that the warehouseman could not store at any one time more than 1,100,000 bushels. The above section of the contract was construed to mean that the railroad company was obliged, during the ten years in which the agreement was to continue in force, to offer to the warehouseman an average of 5,000,000 bushels of wheat per year. *Dunlap et al.* v. *Chicago, M. & St. P. Ry. Co.,* 151 Ill. 409.

Warehouseman has right to terminate storage contract:—Where a warehouseman made a contract with the depositor of grain, by the terms of which the warehouseman agreed to store the same at one-fourth (¼) cent per month until sold, it was *held* that the warehouseman could terminate such contract upon giving notice to the depositor of his intention to do so. The court said that it was not reasonable to suppose that a warehouseman, by a contract of this kind, should be hampered through life for the inconsiderable compensation stipulated for therein. *Cushman* v. *Hayes,* 46 Ill. 145.

Storage contract—One using space hired by another bound by terms of agreement:—Where an agreement is made with a warehouseman for the use of a cold storage room for a stipulated sum per month by which the warehouseman is to be free from all responsibility for its keeping and the person renting such room allows another to place meat therein which becomes spoiled it was held, in an action by the person depositing the meat against the warehouseman that he was bound by the agreement the warehouseman held with the one renting the room and hence there could be no recovery. *Terry* v. *Mattoon Ice & Storage Co.,* 103 Ill. App. 265.

Same—Household goods and clothes—Sale of unclaimed property—Statute not applicable to warehousemen:—In an action for the unlawful conversion of chattels, if the price at which they could have been sold and the price at which other articles equally useful to the owner of the chattels could have been bought at the time and place of such conversion can be shown, this will establish a market price and such market value must control. But clothing and household goods which have been worn and used cannot in all cases be said to have a market price and will not sell as second hand goods for what they are worth to the owner, and in such case in order to give the owner compensation he must be permitted to recover the actual value of such articles. Sections 1 and 3, Ch. 141, R. S., relating to sale of unclaimed property do not apply to warehousemen. *Head* v. *Becklenberg*, 116 Ill. App. 576, 580.

I.

Commingling of goods—When replevin may be maintained:—In order to maintain an action of replevin against a warehouseman, where the property has been commingled with other property stored, the plaintiff must show that the property replevined was his property, that is, the identical property delivered in store; or that the intermixture by defendant, which made identification of his property practically impossible, was the fault of the warehouseman, or that it was done at least without consent of the plaintiff. *Low* v. *Martin*, 18 Ill. 286.

Same—By public warehouseman—Neither a bailment nor a sale:—The doctrine that to constitute a bailment the obligation must be to restore the identical thing which was delivered, and that where the obligation of the receiver is to return another thing of equal value such receiver becomes a debtor to make such return and the transaction is a sale, has no application when the receiver comes into possession in the capacity of a public warehouseman. The statute contemplated that grain deposited in public warehouses by different owners will not be kept separate and that holders of receipts issued by the proprietors of such warehouses will not receive the same grain they put in storage, secures to the owners of such receipts the title and right to a like quantity of other grain equal in value. Such warehousemen do not become debtors to return the identical grain deposited, and therefore debtors for the value of the grain, but

custodians charged with the obligation to restore in quality and quantity. *Snydacker* v. *Blatchley*, 177 Ill. 506, 512.

Same—Custom—Constitutes sale—Depositary becomes debtor of owner:—It was shown that it was customary in Chicago for commission merchants to receive grain consigned to them by their customers and to immediately deposit the same in a public warehouse, where it would be mixed with other grain of a like grade and quality, it was *held* that, upon this being done, the warehouseman did not hold the grain as a bailee but that he was the debtor of the owner who was represented by his commission merchant. If the owner had desired his grain kept separately and the identical grain sold when he might give the order, he could have so provided under the terms of the Warehouse Act. *Bailey* v. *Bensley et al.*, 87 Ill. 556.

Same—Title in owner—Not subject to warehouseman's debts:—Proprietors of public warehouses are not debtors of the owners of grain stored, but are custodians, charged with the duty to restore, in quantity and quality, such grain as they receive. If grain is placed in a warehouse by the owner under a contract, subject to his order and control, it does not make any difference whether it is a private or a public warehouse. No title could pass under such an arrangement and a creditor of the warehouseman cannot seize and sell the property for the warehouseman's debts. *Yockey* v. *Smith*, 181 Ill. 564, 567, 569; affirming 81 Ill. App. 556.

Same—Right to maintain trover not affected thereby—A bailment and not a sale:—Where oats were stored in a warehouse and mingled with other oats, it was *held* that this fact did not deprive the owner of his right to maintain trover. *Further*, that, by the intermixture, his title to the property was not affected and that each individual owner would be entitled to retain and control an ownership of his particular portion of the whole; that neither of the parties in interest would have a right to dispose of the other's share of the entire amount, and that if one did so, trover would lie for the conversion. *German National Bank* v. *Meadowcroft*, 95 Ill. 124; *Howe* v. *Munson*, 65 Ill. App. 674.

Same—Common property—In case of loss, to be borne pro rata—Equity jurisdiction:—Where grain belonging to several different owners was stored in a public warehouse in a common mass,

without objection on the part of the several owners, it became common property, owned by all, in the proportions in which each had contributed to the common mass. It being owned in common, the owners are all liable to sustain any loss which may occur by diminution, decay, or otherwise, in proportion to their respective interests. Persons who purchase warehouse receipts become likewise liable to sustain their *pro rata* share of any loss, precisely as would the persons from whom they purchased the receipt. A court of equity, as part of its ordinary and inherent jurisdiction will, in view of the fact that the property is a trust one, compel the proper protection thereof, and will require the trustee to render the court an account of his proceedings under the trust. *Dole et al.* v. *Olmstead*, 36 Ill. 150; *Same* v. *Same*, 41 Ill. 344.

Same—Assignment by warehouseman—Partial delivery:—Where, in the above case, the warehouseman assigned all the interest which he had in grain stored in his warehouse, belonging to various parties, which grain was there commingled with grain of his own, it was *held* that such assignee held title to all of the grain as trustee, that he was bound to deliver the grain, belonging to the holders of receipts, which was in store at the time, and, having done so, he was exonerated from further liability. If, however, it then appeared that any grain remained, the warehouseman was entitled thereto. *Id.*

Substitution of other property—Equitable lien—Estoppel:—A warehouseman becoming insolvent, a receiver was appointed, upon petition of his creditors. It appeared that he had issued warehouse receipts for a large amount of goods stored in his warehouse and that the owner of the goods had pledged the receipts to a bank to secure a loan. Subsequently, and without the bank's knowledge, the goods represented by the receipts were removed by the depositor, with the consent of the warehouseman, and other goods were substituted in their place. It was contended on behalf of the general creditors that, by this substitution, the bank lost its lien upon the property. It was *held* that the bank had a right to suppose that the property pledged to them remained in the warehouse subject to their order at any time, on surrender of the receipt; that the action of the owner of the goods and of the warehouseman constituted a violation of the statute pertaining to warehousemen, and a

fraud against the bank. It was further *held* that the bank had an equitable lien upon the stored property and that the warehouseman was estopped to deny that the goods in his warehouse were the identical goods represented by the receipt held by the bank. It was further *held* that the appointment of the receiver did not affect the claim of the bank, which claim was a lien against the goods prior to the appointment. *Hoffman et al.* v. *Schoyer et al.*, 143 Ill. 598.

Substitution of other goods—Constitutes a fraud:—If a warehouseman, who has issued a negotiable warehouse receipt for property stored with him, allows the owner thereof to remove part of the goods so stored and substitute other goods in their stead, violates the law of the state and commits a fraud against such person as may then be the owner or holder of the receipt. *Id.*

K.

Attachment—Grain deposited in mass not subject to, in an action against warehouseman:—A deposit of grain in a common mass in a public warehouse is a bailment and not a sale thereof; therefore, in an action against a warehouseman, an attachment cannot be legally levied against the grain of any other depositors, the title thereto remaining in them. *National Bank of Pontiac* v. *Langan*, 28 Ill. App. 401.

Same—Stored property taken from warehouseman under writ of—Good defense:—When stored goods had been removed from the possession of defendant warehouseman under a writ of attachment this is a good defense in an action of trover against him brought by one who had purchased the warehouse receipts, which receipts did not embody the requisite terms as provided in the uniform warehouse receipts act, Revised Statutes Ill. 1912, p. 1869. *Manufacturers Mercantile Co.* v. *Monarch Refrigerating Co.*, 169 Ill. App. 562.

L.

Replevin—When it lies—Grain in bulk:—In order to maintain an action of replevin, if the grain stored has been mixed with other grain, the plaintiff must show that such intermixture was a wrongful act of the warehouseman or, at least, was done without the consent of the plaintiff. *Low* v. *Martin*, 18 Ill. 286.

Same—Breach of bond—Burden of proof:—When the conditions of the replevin bond are broken, any person injured may

sue in the name of the sheriff to his own use. Where a bank is one of the parties in interest in which an action is brought on a replevin bond, the court instructed the jury to the effect that the defendant must show, in addition to other facts, that it took the warehouse receipts pledged with it as collateral without notice of any fraud, whereas the correct instruction should have been that the plaintiff must show by the evidence that the defendant took the receipts with notice of the fraud. *Hanchett* v. *Buckley et al.*, 27 Ill. App. 159; *Atkin* v. *Moore*, 82 Ill. 240; Replevin Act, secs. 10, 25, ch. 119, R. S.; *Jones* v. *Simpson*, 116 U. S. 609; *Montague* v. *Hanchett*, 20 Ill. App. 222.

M.

Pledge—Right to sell—Notice:—A pawnee is not bound to wait for a sale under a decree of foreclosure as a mortgagee is in the case of a mortgage upon land, but he may sell, without judicial process, upon giving a reasonable notice to the debtor to redeem. The notice to the pledgor is indispensable, as to the time and place of sale, in the absence of a contract that the pledgee may sell of his own motion. *Cushman* v. *Hayes*, 46 Ill. 145.

Same—Sale without court decree—Measure damages:—Plaintiff, a married man, stored certain household goods with defendant warehouseman, receiving a receipt. Subsequently he borrowed $20 from defendant. He endorsed the receipt "For value received I hereby sell and assign to W. C. Reebie & Bro. all H. H. goods herein mentioned," and signed and delivered same to defendant. Defendant delivered to plaintiff an agreement to reconvey upon payment of sum named. Later, defendant sold the goods at auction. *Held:* that the transaction was a mortgage, that as plaintiff's wife did not join, it was void, and that defendant was a warehouseman with no right of sale. That by selling without a decree of court empowering him to do so, he converted the goods and the measure of damage was the value of the goods on the date of the demand for them. *Reebie* v. *Brackett*, 109 Ill. App. 631, 636.

Same—Storage to secure an advance—Effect:—A written contract of storage to secure an advance, construed and held to be "a conveyance of personal property having the effect of a mortgage" which, not having been acknowledged and recorded, as between the parties created a lawful lien on the identical grain,

but was without validity as against the rights and interests of third persons. *Snydacker* v. *Blatchley*, 177 Ill. 506, 510.

N.

Negligence—Misdelivery—Warehouseman responsible:—An action for trover lies against a warehouseman who, by mistake, delivers goods to a wrong person, and he will be held responsible for the loss as upon a wrongful conversion. *Brink's Chicago City Express Co.* v. *Hendricks*, 104 Ill., App. 154.

Same—Same—Same—Sampler's ticket not a warehouse receipt:—It appeared from the evidence that it was the custom in Peoria, when grain was received, to have a sampler, who was employed by the Board of Trade, make an examination of the wheat and issue what was known as a sampler's ticket therefor, together with a sample of the wheat. This was done, and the wheat stored with defendant, a warehouseman. A sale of the wheat took place on the Board of Trade and the purchaser received, in accordance with the custom, the sampler's ticket with the name of the seller and of the purchaser written thereon, together with the sample. The warehouseman deliverd to the purchaser the wheat represented, upon the presentation to him of such ticket. It appeared that the check given by the purchaser, for the payment of such wheat, was not paid. It was *held* that the warehouseman acted beyond his authority when he delivered the wheat upon the presentation of this ticket, that in the absence of authority from the seller such ticket was not equivalent to a warehouse receipt, and that the warehouseman was responsible to the owner for the value of the wheat. *Peoria & Pekin Union Ry. Co.* v. *Buckley et al.*, 114 Ill. 337.

Same—Exposure to odors:—In an action for damage to flour stored with warehouseman, it was held that a warehouseman must be presumed to know the ordinary nature and qualities of flour and that it should not be stored where it would be permeated with peculiar and pungent odors of chemicals or with smells and gases, which would naturally render it unfit for use. Verdict for plaintiff affirmed. *Sibley Warehouse Co.* v. *Durand Co.*, 200 Ill. 354, 358.

Damage to goods—Prima facie case—Burden of proof:—It is sufficient to make out a *prima facie* case for plaintiff to show that the property was received by the warehouseman in good

condition, that it was damaged while in the warehouse, and that upon demand for its return it was either not delivered, or was delivered in damaged condition. The burden then shifts to the warehouseman to exonerate himself from liability by showing any cause that would excuse him. *Parry* v. *Squair,* 79 Ill. App. 324.

Cold storage—Agreement as to temperature—Instruction to the jury:—In an action, brought by plaintiff for the recovery of storage charges, for having placed in cold storage a quantity of onions belonging to the defendant, it appeared that there was a great conflict of testimony as to whether there was an agreement concerning the temperature in which the onions were to be stored. Under these circumstances, instruction to the jury to the following effect was *held* erroneous: If it found, from the evidence, that the plaintiff violated his contract with the defendant in failing to keep the onions in question *in the temperature agreed upon* and if the onions rotted as a result of such failure, the jury was then to find for the defendant. From the above charge, the jury might conclude that a certain temperature had been agreed upon, whereas this fact was in controversy. *Western Union Cold Storage Co.* v. *Ermeling,* 73 Ill. App. 394.

Same—Same—Insufficient evidence:—Appellant brought an action in assumpsit against appellee for storage charges upon a large number of apples. Appellee pleaded the general issue and gave notice of set-off thereunder. It was alleged by appellee that many of such apples had been ruined because of the failure of appellant to maintain an agreed temperature. The jury returned a verdict for defendant in the sum of $500.00 "in excess of plaintiff's storage charges $2,182.43." The trial court struck out the part of the verdict quoted, overruled appellant's motion for a new trial and rendered judgment on the verdict as amended. It was held on appeal there was not sufficient evidence to justify a verdict that the apples were damaged by reason of failure to maintain a certain temperature or that such an agreement had been made. Judgment was reversed and a new trial ordered. *Western Union Cold Storage Co.* v. *Warner et al.,* 78 Ill. App. 577.

Same—Measure of damages:—In a case where goods are received in cold storage and it is alleged that they have depreciated in value as result of failure on the part of the warehouse-

man to maintain the requisite temperature, the proper measure of damages should be the market value of the goods on the day of demand less the storage charges due thereon. *Western Union Cold Storage Co.* v. *Ermeling*, 73 Ill. App. 394.

Non-delivery of goods—Burden of proof:—In an action against a warehouseman for not delivering goods, the burden of proving delivery to the warehouseman and the failure to redeliver by him, is on the plaintiff, but those facts being proved, it devolves on the warehouseman to show that the goods were lost without his fault. *Edgerton* v. *C. R. I. & P. Ry. Co.*, 146 Ill. App. 199, 203. Affirmed 240 Ill. 311.

Missing goods—Burden of proof:—In an action against a warehouseman for injury to goods stored with him, it was held that the presumption of negligence on the part of the warehouseman as to certain goods which were destroyed by fire, was rebutted, but as to missing goods the loss of which was unexplained, the law presumed negligence and imposed on the warehouseman the burden of showing that he had exercised such care as required by the nature of the bailment. *Cumins* v. *Wood*, 44 Ill. 416, quoted in *Edgerton* v. *C. R. I. & P. Ry. Co.*, 146 Ill. App. 199, 203.

Evidence—Receipt for goods by teamster not binding as admission of their condition:—Defendant warehouseman delivered certain flour to plaintiff's teamster who took a receipt signed by the teamster, reading "Received in good condition the articles named in this order." *Held:* that the delivery of the flour being admitted, the trial court properly rejected the receipt as evidence of the condition of the flour. It is not within the ordinary scope of the authority of a teamster sent after goods to make an admission of that kind, and there was no evidence of actual authority to do so. *Sibley Warehouse Co.* v. *Durand Co.*, 200 Ill. 354, 356; affirming 102 Ill. App. 406.

Removal of goods to different room—Damage by fire—When warehouseman not liable:—Plaintiff contracted with defendant warehouseman to store his goods in a certain inside room. Afterwards, without the knowledge of plaintiff the defendant removed the goods to an outside room with an outside window. A fire in an adjoining building spread to defendant's warehouse and greatly damaged plaintiff's goods, while other goods at the time in the room in which defendant has contracted to store

plaintiff's goods were only slightly damaged. *Held:* that the removal of the goods of plaintiff and the fire had no natural or necessary connection. The removal of the goods was but the occasion, not the cause of the damage. Judgment directed for defendant. *McRae* v. *Hill,* 126 Ill. App. 349.

O.

Measure of damages:—Where, in an action for the conversion of wheat stored, the market price thereof being proved, it is a fair presumption that the warehouseman procured such price and the measure of damages is the value of the wheat at the time it should have been delivered. *Leonard* v. *Dunton et al.,* 51 Ill. 482.

Same—Where taking not tortious:—Where there has been a breach of contract of bailment and the taking of the property has been tortious, assumpsit lies and the value of the property converted, at the time of demand, is the proper measure of damages. The actual amount received is the proper measure where the taking was not tortious. *O'Reer* v. *Strong,* 13 Ill. 690; *McDonald* v. *Brown,* 16 Ill. 320; *Cushman* v. *Hayes,* 46 Ill. 145.

P.

Insurance—Joint owners have an insurable interest—Other insurance:—A party stored grain in a warehouse and procured a policy of insurance thereon in the name of a member of the firm doing the warehouse business. There was an indorsement on the policy to the effect that loss, if any, should be paid to the depositor as his interest may appear. In an action brought by such depositor, against the insurance company, after the destruction of the grain by fire, it was *held* that the action could be maintained by him and that the issuance of the policy to a member of the firm operating the warehouse was proper and that he, or his partner, had an insurable interest in the grain. The policy also provided that there should be no other insurance placed thereon. It apeared that the warehousemen had insured the property in another company and that the loss was payable to them. *Held:* that this did not constitute "other insurance" within the meaning of the policy. *Traders' Insurance Co.* v. *Pacaud et al.,* 150 Ill. 245.

Contract by warehouseman to insure—Not responsible if suit on policy terminates against him without his fault:—Defendant,

a warehouseman, contracted with plaintiff to receive and store a large number of barrels of apples, the warehouseman agreeing to keep them insured with responsible companies. This the warehouseman did and, after destruction by fire, the warehouseman brought an action against the companies for the recovery of the amount stated in the policies. The warehouseman had given a receipt to the owner which provided that a large proportion of the property stored was to be insured only up to a date prior to the destruction by fire. This receipt had been given to the owner, at his request, and on account thereof, the warehouseman failed to recover from the insurance company for the loss of the property. In an action between the owner of the goods and the warehouseman, it was *held* that, as the latter had complied with all the terms of his contract, he could not be compelled to bear this loss but that it must fall upon the owner. *Cole* v. *Favorite*, 69 Ill. 457.

Insurance—Failure to aver in petition absence of other insurance, fatal:—Petitioner's goods were destroyed by fire while stored with defendant Woods Motor Vehicle Company, which was at the time in the hands of a receiver. The receiver had procured policies of insurance on property in his possession and had collected the money. Petition for accounting. *Held:* as the petition contained no averment that petitioner had no other insurance, or was in no way, other than by said policies indemnified against loss by the fire in question, that the omission was fatal to the sufficiency of the petition. The absence of other insurance is a condition upon which alone relief could be granted. *Friedman* v. *Woods Motor Vehicle Co.*, 123 Fed. 413.

Q.

Warehouse receipts—Cannot limit liability:—A warehouseman cannot in a warehouse receipt limit or exempt himself from liability unless articles are listed or itemized, and cannot provide for a limitation of liability unless value of goods is stated. Sec- for a limitation of liability unless value of goods is stated. *Van Buren S. & V. Co.* v. *Mann*, 139 Ill. App. 652.

Same—Issued by private warehousemen—Quasi-negotiable:—Warehouse receipts, issued by private agents, or by warehousemen other than those described by the statute of this state as public warehousemen, are on the same footing as bills of lading

in respect of their *quasi*-negotiable character. *Northrop et al.* v. *First National Bank*, 27 Ill. App. 572; *Western Union Ry. Co.* v. *Wagner et al.*, 65 Ill. 197.

Same—Receipts issued by factors:—Where it appeared that a firm, which had never been in the business of warehousing, issued what were in form warehouse receipts against their own property stored therein; it was *held* that these were not warehouse receipts within the meaning of the statutes and that the holder thereof was in no better position than one who held an unrecorded chattel mortgage. *Trumbull et al.* v. *Union Trust Co. et al.*, 33 Ill. App. 319; aff'd 137 Ill. 146.

Same—Recitals—Effect:—A warehouse receipt reading in part "Received in store one hundred thirty-nine bales W. Cotton waste, weighing 62,500 lbs. . . . The contents of trunks, boxes, parcels, barrels, baskets, etc., mentioned in this receipt being unknown are stored at owner's risk. . . . " *Held:* that this clause must be given effect. That no warranty as to the contents of the bales could be implied from the language of the receipt, that such language is merely descriptive, and the warranty only extended to the number of bales. An offer to return the identical bales received would be sufficient to discharge the liability of defendant as warehouseman. The case was reversed to permit the introduction of additional evidence. *Union National Bank* v. *Griswold*, 141 Ill. App. 464.

Same—Failure to state distinguishing marks as required by statute—Effect:—Where warehouse receipts were issued for tea and other property stored, and they failed to have stated thereon the distinguishing marks as required by section 24 of the act of April 25, 1871, it was contended that the effect of such failure was that they were void since they were issued in violation of law. It was *held* that, since the statute did not impose any penalty in the case of such omission, the failure did not in any wise vitiate or impair the lien against the property represented, in favor of the person holding the receipt as security. In such a case, evidence will be received to ascertain the exact property intended to be represented by the receipt. *Hoffman et al.* v. *Schoyer et al.*, 143 Ill. 598.

Same—Receipt held to be a sale by way of mortgage:—Parties delivered to a warehouseman a large quantity of wheat and at the same time delivered to him an instrument in which it was

stated that the wheat was delivered to the warehouseman free of all incumbrance except that held by the warehouseman, and that the latter was at liberty to dispose of the same and to deduct his claim for storage and all accrued costs and charges and to pay the balance to the owner; further, that the assignment of such receipt by the warehouseman should at once vest in the holder full title and ownership in the property mentioned the same as if the receipt had been originally issued to him. It was *held* that this did not constitute a warehouse receipt but was a sale by way of mortgage. *Snydacker* v. *Blatchley et al.*, 72 Ill. App. 519. Affirmed 177. Ill. 506.

Same—Receipt as collateral—Criminal action:—The owner of a grain warehouse having therein only his own grain, issued a warehouse receipt thereon and endorsed it to a bank as collateral security. *Held:* that the receipt having been endorsed and delivered as collateral security, it was in legal effect, an unrecorded and unacknowledged chattel mortgage, possession of the property remaining with the mortgagor, and that such an instrument comes within Sections 124 and 125, Ch. 38, Hurd's Rev. Statutes of 1905. Judgment of Criminal Court affirmed. *McReynolds* v. *People*, 230 Ill. 623, 637.

Same—When a valid tender:—Where, under a contract of sale of wheat, the seller tenders a warehouse receipt, this *held* to constitute a valid tender unless the purchaser objects thereto. Where the purchaser is absent, a mere readiness to tender warehouse receipt for the property cannot be construed to be a valid tender thereof. *McPherson* v. *Gale*, 40 Ill. 368; *McPherson* v. *Hall*, 44 Ill. 264.

Same—Interpretation—Execution against warehouseman:—Where a warehouseman received corn in storage and issued a receipt which was regular in all respects but that it had at the end thereof "Subject to their order for all advances of money on the same," it was *held* that this expression did not reduce the transaction to a mere pledge. The testimony of the warehouseman showed that he purchased this corn with money furnished by the party in whose name the receipt was issued. Under these facts, an execution issued against the warehouseman would not lie against the corn. *Cool et al.* v. *Phillips & Carmichael*, 66 Ill. 216.

Same—Same—Free storage—Reasonable time—Notice:—A warehouseman received a quantity of corn and issued a receipt therefor in which it was stated that the same was received free of storage charges and was to be placed on boats to be sent by the owner. It was *held* that the warehouseman was only obliged to keep the same free of storage for a reasonable time, and, after notice to the owner, storage could be charged at a reasonable rate. *Myers et al.* v. *Walker*, 31 Ill. 353; *Same* v. *Same*, 24 Ill. 123.

Same—Same—Where warehouseman sells the goods and subsequently receives them for storage—Not subject to execution against him:—The law does not prohibit a public warehouseman from selling his own grain and, if he does so in good faith, he may, as well as any one else, become its future custodian. The fact that he keeps a public warehouse is of itself notice to the world that the property therein stored is held for others, at least, sufficient to put parties interested on inquiry. Under such circumstances, an execution cannot be validly issued against property stored in his warehouse in the name of his purchaser. *Broadwell* v. *Howard et al.*, 77 Ill. 305.

Same—Effect of transfer:—The transfer of the warehouse receipt is not a symbolical delivery, it is a real delivery to the same extent as if the goods had been transported to another warehouse named by the pledgee. *Union Trust Co.* v. *Wilson*, 198 U. S. 530, 536.

Same—Negotiability—Statute construed:—Warehouse receipts are not negotiable instruments within the meaning of the statute of the state of Illinois. Under the rules of construction that a statute is not to be construed as changing the common law further than its terms expressly declare, it was *held* that a negotiable instrument must be an absolute and unconditional promise to pay money or deliver property at a time that will certainly happen. It may be unknown in advance when it will transpire but it must be absolutely certain that it will be sometime. Although it may be in the power of the party to whom the promise is made to render it certain, by his subsequent act, this will not be sufficient. It cannot be such a time as will depend upon his will or his pleasure. Under the statutes a warehouseman is not responsible for wheat destroyed by fire in the absence of negligence, nor is he pledged to redeliver unless the receipt is properly

indorsed and all the proper charges paid; it is, therefore, impossible to know, in advance, with absolute certainty, that the warehouseman will *ever* be required to redeliver the wheat. It is precisely as if the promise were to redeliver upon condition that none of these things allowed as excuses for non-delivery should intervene, as well as all future conditions actually written in the receipt. It does not follow that, because the statute has made bills of lading and warehouse receipts negotiable by indorsement and delivery, that all the consequences of indorsement and delivery of bills and notes before maturity ensue, or are intended to result from such negotiation. *Canadian Bank* v. *McCrea et al.*, 106 Ill. 281; *Burton* v. *Curyea*, 40 Ill. 320; *Shaw* v. *R. R. Co.*, 101 U. S. 557; *Western Union R. R. Co.* v. *Wagner*, 65 Ill. 197; *Chicago Dock Co.* v. *Foster*, 48 Ill. 507; *Mfg. Mercantile Co.* v. *Monarch Refrigerating Co.*, 169 Ill. App. 562. See also *Northrop* v. *First National Bank*, 27 Ill. App. 527, and the cases there cited.

Same—Same—Suit by assignee:—A warehouse receipt was duly indorsed to plaintiff, who received at the same time a certificate stating that the condition of the property represented by it was good. It subsequently appeared that the property was not in the condition stated in the certificate, which was delivered to the original holder of the receipt. It was *held* under such conditions, that the assignee could maintain an action for this breach, and that, under the statutes of the state, warehouse receipts are made negotiable instruments, not possessing, however, all the qualities of negotiable paper, which furnish full protection to the innocent holder, but are, nevertheless, negotiable to the extent of transferring to the assignee all the interest, rights and remedies of the original assignor thereof. A judgment in the suit of the indorsee would be a bar to another action against the defendant. *Sargent* v. *Central Warehouse Co.*, 15 Ill. App. 553.

Same—Same—Assignor not liable—Custom:—In an action, brought by plaintiff against defendant, to recover back the purchase money paid by the former to the latter in the purchase of whiskey, the transfer of which was represented by warehouse receipts, it was *held* that the purchaser could look only to the warehouseman. In this case, it appeared that the defendant offered to prove that it was a custom, well known in the whiskey trade, that the seller of warehouse receipts was never looked to as the responsible party but that sole reliance was placed upon

the warehouseman. It was *held* that such custom or usage should have been allowed to have been proved. *Mida* v. *Geissman*, 17 Ill. App. 207.

Same—Bona fide holder, protected:—Plaintiff sold certain grain, represented by warehouse receipts, which were duly transferred to the purchaser, and received his check in payment therefor. The purchaser threupon attached such warehouse receipts to a draft, drawn upon one in another city, and deposited them to his credit in the defendant bank. The check given by the purchaser was not presented until the next day when payment was refused, in the meantime the purchaser having failed. The plaintiff thereupon sued the bank in trover for the value of the wheat. It was *held* that the bank was a *bona fide* holder of the receipt and hence not liable in such action. The court stated that, in view of the fact that the sale was for cash it was conditional upon the payment to the plaintiff of the check given for the wheat and, therefore, he could properly demand its return from the purchaser. *Hide & Leather National Bank* v. *West et al.*, 20 Ill. App. 61.

Same—Indorsement—Effect:—Indorsement and delivery of a warehouse receipt transfers the title to the stored property to the assignee and gives him a right of action for any breach of duty of which the warehouseman might be guilty respecting the goods while in the warehouse. *Sargent* v. *Central Warehouse Co.*, 15 Ill. App. 553. See also Union National Bank 1. Griswold, 141 Ill. App. 464.

Same—Collateral security—Estoppel:—Where warehouse receipts were pledged by the bailor as collateral security for a loan, it was *held* that, where there was no evidence to show that the lender knew of any facts impairing the title of the bailor to such goods, such lender will be protected when classed with the general creditors, in case of the insolvency of the bailor. Further, it was shown that part of the goods originally stored had been removed and other goods substituted in their place. This fact not being known to the person holding the receipt as collateral it did not affect the security, although the warehouseman violated the statute and committed a fraud against such party by allowing substitution of goods. Under the above facts, the receipt holder became entitled as against the bailor to an equitable lien on the merchandise, such lien arising, if on no other, at least

upon the ground of estoppel. *Hoffman et al.* v. *Schoyer et al.*, 143 Ill. 598; *Union Trust Co.* v. *Trumbull*, 137 Ill. 146.

Same—Same—Legal effect of sale—Burden of proof on plaintiff:—The pledge of a warehouse receipt as collateral security, to secure the payment of a note, is, in legal effect, a sale to the bank of the property called for by the receipt for a valuable consideration and vests the legal title thereto in the bank. The burden is upon the plaintiff to show that the defendant bank took with notice of fraud in the original purchase. *Hanchett* v. *Buckley et al.*, 27 Ill. App. 159; *Chicago Dock Co.* v. *Foster*, 48 Ill. 507; *Jewett* v. *Cook*, 81 Ill. 266; *O. & M. R. R. Co.* v. *Kerr*, 49 Ill. 458.

Same—Action by one holding as collateral security:—Where a person who held a warehouse receipt as collateral security brought an action in case against the warehouseman; upon demurrer to the declaration, in which it was alleged that the receipt was fraudulently issued, it was *held* that a person holding warehouse receipts could properly maintain such an action and that it was immaterial whether the loss to the plaintiff, from the wrongful act of the defendant, consisted of his being deprived of his money or the grain. *Low* v. *Martin*, 18 Ill. 290.

Same—Warehouseman's obligation upon:—Persons holding grain receipts have only the obligation of the warehouseman for the proper storage and delivery of their grain, according to the terms of their receipts, or, in case of default, to recover of the warehouseman the damages growing out of a breach of the contract. The giving of the receipts creates no specific or general lien on the property of the warehouseman. *Dole* v. *Olmstead*, 36 Ill. 150; *Same* v. *Same*, 41 Ill. 344.

Same—Fraudulent unless they truly represent the property in store:—A warehouseman issued receipts, in the name of a bank, to secure the payment of loans made to him by the bank. The statements contained in such receipts, as to the kind of goods which they represented, were false. It was contended that, in view of the fact that the statements were known to the bank to be untrue, the provisions in the warehouse act, in relation to the issuance of false receipts, did not apply. The court *held* that this contention was not correct, that the act included the issuance of any warehouse receipt which was in any wise false or fraudulent and that the receipts are required, by the act,

to be the true representatives of the property actually in store and that their issuance is prohibited under any other conditions or circumstances. Further, that this was the purpose of the legislature is manifest from its other provisions which make warehouse receipts transferable in lieu of the property which they represent. *Sykes* v. *The People*, 127 Ill. 117.

Same—Goods not in existence when issued:—Where the evidence showed that a receipt, issued by one who was not a public warehouseman, represented goods which were not in existence at the time, it was *held* that such receipt was void. It was not, in fact, a warehouse receipt at all within the meaning of the statutes. If any of the goods, which were represented, were in existence, the receipt would simply constitute an acknowledgment, by the person having issued it, that he had received such merchandise. *Montgomery Ward & Co.* v. *Union Trust and Savings Bank*, 71 Ill App. 20.

Same—Parol evidence excluded:—In an action upon a warehouse receipt evidence in support of the claim, that it was understood between the parties that the wheat should be stored free of charge for a short time only, will not be received as this would be an attempt to vary the terms of the receipt, which is a contract between the parties, by parol evidence. *Leonard* v. *Dunton*, 51 Ill. 482.

Same—Delivery without receipt—Action on receipt:—Where one, acting as agent for another, stores property with a warehouseman, and has a receipt issued to him in his own name, ostensibly for his convenience in handling it as agent, which fact the warehouseman knew, and the warehouseman afterward delivers the property to the real owner, without the receipt, such agent cannot, upon such receipt, recover against the warehouseman. *Gates* v. *Thede*, 91 Ill. App. 603.

Same—Purpose of surrender to warehouseman—Erroneous instruction:—In an action against a warehouseman, for the value of grain, where the plaintiff was not in the possession of the receipt, the court instructed the jury as follows: "If the jury believe from the evidence that the warehouse receipt in evidence was not held by the plaintiff at the time of the levy of the execution, offered in evidence, but had been surrendered to the warehouseman prior to that time, then the plaintiff is not entitled to

any of the property replevined, by reason of his once having held such receipt." It was *held* that this instruction, when applied to the evidence tending to show that the receipt was surrendered for the purpose of securing the delivery of the grain, was clearly erroneous. *Nelson et al.* v. *McIntyre,* 1 Ill. App. 603.

Inquiries to warehouse employees—When warehouseman not liable—Improper instruction to jury:—Where it appeared, in an action brought by one who had been employed in a warehouse, against the owners thereof, for personal injuries received while in the performance of his duties, that the plaintiff was injured by reason of the defective condition of a trigger in a trapdoor through which grain was dumped into the bins in the warehouse. The court instructed the jury that, in this case, it would not be sufficient for the defendants simply to prove that they had purchased proper and safe machinery but that if it appeared by the preponderance of evidence that the same was not kept in a safe condition or that the dump in question was defective and by reason thereof the alleged injury resulted, then the plaintiff is entitled to recover, provided he exercised due care. It was *held* that this instruction was erroneous, for no degree of care on the part of the defendants would exonerate them from liability for injury actually caused by a defect in their machinery. It practically attempts to make them insurers. *Wilson* v. *Kelly,* 52 Ill. App. 124.

U.

Penal sections of warehouse act are embraced in the title thereof, and are valid:—A warehouseman was indicted under that provision of the warehouse act which declares it to be a crime to issue false or fraudulent warehouse receipts. The contention was made, in his behalf, that this provision of the warehouse law was void for the reason that it was not embraced in the title of the act, that title being "An act to regulate public warehousemen and the warehousing and inspection of grain and to give effect to article 13 of the constitution of the state." It was *held* that the section under consideration was manifestly germane to the purpose of the act as stated in this title, and therefore, the above contention could not be sustained. It was also contended that this section of the warehouse act was repealed by sections 124 and 125 of the criminal code. The court *held* that the provisions of this section were not repugnant to the warehouse act

and, therefore, there was no repeal by implication. *Sykes* v. *The People*, 127 Ill. 117; *Same* v. *Same*, 132 Ill. 32.

Public warehousemen—Statutes requiring license and prescribing rates of storage, constitutional:—The legislature of Illinois, in 1871, passed an act entitled "An act to regulate public warehouses and the warehousing and inspection of grain, and to give effect to Article 13 of the constitution of the state." Under sections 3 and 4 of this act the defendant was indicted for the violation thereof, in that he conducted a public warehouse in the city of Chicago without having procured a license as required by this act. The act further provided a maximum charge which warehousemen, doing business in said state, should be allowed to make. It appeared that the defendant had been doing business as warehouseman for a long period prior to the enactment of said statute. The contention was made in his behalf that the act was unconstitutional and void, in that it deprived him of property without due process of law. The court *held* that, by the terms of the law under consideration, no right of property was taken away or destroyed. That all the property the owners ever had in their possession remained to them untouched by the strong hand of the legislature, that the act must be held to be an honest effort on the part of the legislature to arrest a great and growing evil by the regulation of the charges which warehousemen could demand, and placing them under bond that they could not violate its provisions. *Munn* v. *Illinois*, 69 Ill. 80, aff'd 94 U. S. 113. See also *People* v. *Budd*, 117 N. Y. 1, aff'd 143 U. S. 517; *North Dakota ex rel. Stoeser* v. *Brass*, 2 N. D. 482, aff'd 153 U. S. 391; *People* v. *Miller*, 82 N. Y. Supp. 582. See *State* v. *Associated Press*, 159 Mo. 410, in which the authorities are fully reviewed and the doctrine of *Munn* v. *Illinois* severely criticised and departed from; see also note to *People* v. *Budd*, in New York decisions, this volume, page 675.

Mixing of grain belonging to warehouseman with that of customers—Act unconstitutional:—The act of 1897, p. 300, attempting to permit the keeper of a public warehouse to mix his grain with that of his customers and to issue and deal in warehouse receipts representing the mass of grain is unconstitutional. *Hannah* v. *People*, 198 Ill. 77, 97.

Taxation of property of decedents estates in safe deposit boxes —Law constitutional:—The Act of June 14, 1909 (Hurd's Stats. 1909, p. 1897), prohibiting a safe deposit company and all others having possession of securities or other property belonging to the estate of a decedent, from delivering same to any administrator, executor or other person without giving the prescribed notice to the State Treasurer and Attorney General, upon penalty of paying the inheritance tax which might accrue thereon with interest and $1,000 in addition, is valid and constitutional. *National Safe Deposit Co.* v. *Stead,* 250 Ill. 584. Aff'd by Sup. Ct. U. S. Jan. 5, 1914, No. 138 Oct. Term 1913, not yet reported.

CHAPTER XIV

INDIANA

LAWS PERTAINING TO WAREHOUSEMEN

Classes permit—Record of permit and withdrawal:—Public warehouses shall be divided into two classes, to be designated as classes "A" and "B," respectively. Any person or incorporated company desiring to keep any such public warehouse shall be entitled to do so upon receiving a permit therefor from the auditor of the county in which such warehouse shall be kept.

Such permit shall be granted upon the written application, signed by the owner or owners of such warehouse, if natural persons, or, if owned by a corporation, by the president and secretary thereof. Every warehouse receiving such permit shall continue, subject to the provisions of this act, until the owner or owners thereof shall file in said auditor's office written notice, signed as aforesaid, that they desire to renounce the character of public warehousemen; and such auditor shall keep a record of such permit and renouncement. Warehousemen not taking out such permit shall not be in any wise affected by the provisions of this act. Burns Annotated Statutes 1908, sec. 10483.

What classes "A" and "B" embrace:—Public warehouses of class "A" shall embrace all warehouses, elevators or granaries in which grain is stored in bulk, and in which the grain of different owners is mixed together, or in which grain is stored in such a manner that the identity of different lots or parcels cannot be accurately preserved; public warehouses of class "B" shall embrace all other warehouses or places where property of any kind is stored for a consideration. Any corporation, company, individual or lessee, operating or conducting a public warehouse, shall be deemed a public warehouseman. Where a permit has been heretofore obtained, or may hereafter be obtained under this act, to keep a public warehouse, such permit shall be so construed as to have included and to include more than one building or room, or parts of buildings or places of storage at the same

time: *Provided*, That such places were or are all in the same county in which the permit was or may be issued, and provided that the distinctions between the classes "A" and "B," as stated in this section, have been or shall be preserved by the warehouseman. *Id.* sec. 10484.

Duty of class "A"—Inspecting — Grading — Storing — Receipt:—It shall be the duty of every warehouseman of class "A" to receive, for storage, any grain that may be tendered to him in the usual manner in which warehouses are accustomed to receive the same in the ordinary and usual course of business, not making any discrimination between persons desiring to avail themselves of warehouse facilities. Such grain, in all cases, shall be inspected and graded by a duly authorized inspector, and stored with grain of a similar grade; but if the owner or consignee so request, and the warehouseman consent thereto, his grain may be kept in a bin by itself, apart from that of other owners, which bin shall thereupon be marked and known as a separate bin. If a warehouse receipt be issued for grain so kept separate, it shall state, on its face, that it is in a separate bin. Nothing in this section shall be so construed as to require the receipt of grain into any warehouse in which there is not sufficient room to accommodate or store it properly, or in case where such warehouse is necessarily closed. *Id.* sec. 10485.

Warehouse receipt for class "A":—Upon the application of the owner or consignee of grain stored in a public warehouse of class "A" (the same being accompanied with evidence that all transportation or other charges which may be a lien upon such grain, including charges for inspection, have been paid), the warehouseman shall issue, to the person entitled thereto, a warehouse receipt therefor, subject to the order of the owner or consignee; which receipt shall bear date corresponding with the receipt of the grain into store, and shall state, upon its face, the quantity and inspected grade of the grain, and that the grain mentioned in it has been received into store, to be stored with grain of the same grade by inspection, and that it is deliverable upon the return of the receipt, properly indorsed by the person to whose order it was issued, and the payment of proper charges for storage. All warehouse receipts for grain issued from the same warehouse shall be consecutively numbered, and no two receipts bearing the same number shall be issued from the same

warehouse during any one year, except in the case of a lost or destroyed receipt, in which case the new receipt shall bear the same date and number as the original, and shall be plainly marked on its face "Duplicate." Nothing in this section shall be so construed as to require any warehouseman or warehouse company to issue a duplicate or substituted receipt, unless sufficient and satisfactory evidence of the loss of the original is produced, and unless good and sufficient security and indemnity against liability on the original receipt shall be given. *Id.* sec. 10486.

Receipt, when cancelled, void:—Upon delivery of grain from store upon any receipt, such receipt shall be plainly marked across its face with the word "Cancelled" with the name of the person cancelling the same, and it shall thereafter be void, and shall not again be put in circulation, nor shall grain be delivered twice upon the same receipt. *Id.* sec. 10487.

Receipt only for actual delivery:—No warehouse receipt shall be issued except upon the actual delivery of grain into store in the warehouse from which it purports to be issued, and which is to be represented by the receipt, nor shall any receipt be issued for a greater quantity of grain than was contained in the lot or parcel stated to have been received, nor shall more than one receipt be issued for the same lot of grain, except in cases where receipts for parts of a lot are desired, and then the aggregate receipts for a particular lot shall cover that lot and no more. In cases where a part of the grain represented by the receipt is delivered out of store and the remainder is left, a new receipt may be issued for such remainder; but such new receipts shall bear the same date as the original, and shall state, on its face, that it is the balance of receipt of the original number; and the receipt upon which a part has been delivered shall be cancelled in the same manner as if it all had been delivered. In case it be desirable to divide one receipt into two or more, or in case it be desirable to consolidate two or more receipts into one, and the warehouseman consents thereto, the original receipt shall be cancelled the same as if the grain had been delivered from store; the new receipts shall express on their face that they are parts of other receipts, or a consolidation of other receipts, as the case may be; and the numbers of the original receipts shall also appear upon the new ones issued, as explanatory of the change. All new receipts issued for old ones, cancelled as herein provided, shall

bear the same date as those originally issued, as near as may be. *Id.* sec. 10488.

Delivery of property:—On the return of any warehouse receipt issued by any warehouseman, properly indorsed, and the tender of all proper charges upon the property represented by it, such property shall be immediately deliverable to the holder of such receipt: *Provided*, No warehouseman shall be held in default in delivering, if the property be delivered in the order demanded, or in the order that transportation may be furnished, and as rapidly as due diligence, care and prudence will justify. *Id.* sec. 10489.

Responsibility for loss or damage:—No public warehouseman shall be held responsible for any loss or damage to property by fire while in his custody, provided reasonable care and vigilance be exercised to protect and preserve the same; nor shall he be held liable for damage to grain by heating, if it can be shown that he has exercised proper care in handling and storing the same, and that such heating or damage was the result of causes beyond his control. *Id.* sec. 10490.

Duty as to grain out of condition:—In case, however, any warehouseman of class "A" shall discover that any portion of the grain in his warehouse is out of condition, or becoming so, and it is not in his power to preserve the same, he shall immediately give public notice (by posting a notice in the most public place, for such a purpose, in the city or town, in which such warehouse may be located) of its actual condition, as near as he can ascertain it, and shall state, in such notice, the kind and grade of grain, the bins in which it is stored, the receipts outstanding, upon which such grain shall be delivered, giving the numbers, amounts and dates of each (which receipts shall be those of the oldest dates then in circulation or uncancelled), that the grain represented has not been previously declared or receipted for as out of condition; or if the grain longest in store has not been receipted for, he shall so state, and shall give the name of the party for whom such grain was stored, the date it was received, and the amount of it. The enumeration of receipts and identification of grain, so discredited, shall embrace, as near as may be, as great a quantity of grain as is contained in such bins; and such grain shall be delivered upon the return and cancellation of the re-

ceipts, and the unreceipted grain upon the request of owner or person in charge thereof. *Id.* sec. 10491.

Further duty as to such grain—Sale:—Nothing herein contained shall be held to relieve the said warehouseman from exercising proper care and vigilance in preserving such grain after such publication of its condition; but such grain shall be kept separate and apart from all direct contact with other grain, and it shall not be mixed with other grain while in store in such warehouse. Nothing in this section shall be so construed as to permit any warehouseman to deliver any grain stored in a separate bin or by itself, as provided in this act, to any but the owner of the lot, whether the same be represented by a warehouse receipt or otherwise. In case the grain declared out of condition, as herein provided for, shall not be removed from store by the owner thereof, within thirty days from the date of the notice of its being out of condition, it shall be lawful for the warehouseman with whom the grain is stored to sell the same at public auction, for account of said owner, by giving ten days' public notice by advertisement in a newspaper (daily, if there be such) published in the city or town where such warehouse is located. *Id.* sec. 10492.

Good faith required:—It shall not be lawful for any public warehouseman to select different qualities of the same grain for the purpose of storing or delivering the same, nor shall he attempt to deliver grain of one grade for another, or in any way tamper with grain, while in his possession or custody, with a view of securing profit to himself or any other person. Nothing in this section, however, shall prevent any warehouseman from moving grain while within his warehouse, for its preservation or safekeeping. *Id.* sec. 10493.

Owners and inspectors may examine warehouse:—All persons owning property, or who may be interested in the same, in any public warehouse, and all duly authorized inspectors of such property, at all times during ordinary business hours, shall be at full liberty to examine any and all property stored in any public warehouse in this state; and all proper facilities shall be extended to such persons by the warehouseman, his agents or servants, for an examination. All parts of public warehouses shall be free for the inspection and examination of any person

interested in property stored therein, or of any authorized inspector of such property. *Id.* sec. 10494.

Receipts negotiable—Receipts of class "B":—Warehouse receipts for property stored in any class of public warehouses, as herein described, shall be negotiable and transferable by the indorsement of the party to whom such receipt may be issued; and such indorsement shall be deemed a valid transfer of the property represented by such receipt, and may be either in blank or to the order of another. Every indorsee or transferee of such receipt may, in like manner and with like effect, negotiate and transfer the same, by indorsement, to the order of another, or in blank, or by delivery under a prior indorsement in blank. Every such indorsement shall be deemed to be a warranty that the indorser has good title and lawful authority to sell the property named in such receipt. No sale of grain in store, which is not evidenced or accompanied by a transfer of the warehouse receipt given therefor, shall be valid as against the *bona fide* holder of such receipt. All warehouse receipts for property stored in public warehouses of class "B" shall distinctly state, on their face, the brand or distinguishing mark on such property. *Id.* sec. 10495.

Fraudulent receipts, or removing property, felony:—Any warehouseman of any public warehouse, who shall be guilty of issuing any warehouse receipt for any property not actually in store at the time of issuing such receipt; or who shall be guilty of issuing any warehouse receipt in any respect fraudulent in character, either as to date, or as to the quantity, quality, or inspected grade of such property; or who shall remove any property from store, except to preserve it from fire or other sudden damage, without the return and cancellation of any and all outstanding receipts that may have been issued to represent such property—shall be deemed guilty of a crime, and, upon conviction thereof, shall suffer, in addition to any other penalties prescribed by this act, imprisonment in the penitentiary for not less than one and not more than ten years. *Id.* sec. 10496.

Appointment of grain inspectors:—There shall be appointed, annually by the board of trade or other commercial organization, one or more inspectors of grain and other property, for the county where such board is organized; and in case there be no such organization in any county, then the judge of the

circuit court may appoint such inspectors. Every inspector, before entering upon the duties of his office, shall take an oath to faithfully and honestly perform his duty according to law. Where there are two or more such organizations in any city, the one whose members deal most exclusively with grain and produce shall make such appointment, and it shall provide for his compensation, and for that purpose may fix a schedule of fees to be paid by the owners of such property as may be inspected. *Id.* sec. 10497.

Duty of Inspectors—Compensation:—Inspectors appointed in pursuance of this act may classify and determine the grade to which any article of property submitted to his inspection belongs, but where there is a board of trade, or other commercial organization in such county, such organization shall have the exclusive authority to fix the grade of property, defining what shall constitute grades numbers one, two, etc., the inspector determining only as to what grade the same belongs, and where there is no such organization in any county, then the grading and rates of compensation for inspection, adopted by such organization in the city nearest to the point where such grain or other property is inspected, shall govern such inspector in his inspection: *Provided*, That all grain in carloads, shipped over any railroad, upon arriving at any city or town where there is a regularly appointed and qualified inspector or inspectors, duly appointed and qualified under the provisions of this act, shall be inspected and graded by a duly authorized inspector, unless notice that such grain is not to be inspected shall have been given to the railroad company transporting such car, or to the inspector, before the arrival of such grain. The grain so arriving shall be inspected in the yards of the railroad company over whose railroad it shall arrive, and it shall be the duty of the railroad company to post, in its yard office, the number and initials of such cars and the location of same, and to place the same, upon arrival, where they may be easily and conveniently inspected, and such inspector is hereby authorized to enter said car or cars at any time thereafter for the purpose of inspecting and grading such grain: *And, provided, further*, That any grain destined to an elevator of class "A" may be inspected on the tracks of such elevators instead of in the yards of the railroad company. The provisions of this act shall not apply to grain

which is transported through such city or town by the railroads and which is not to be stopped at such city or town for unloading, handling, storing, sale or re-consigning, unless the bill of lading of such grain bears upon the face thereof the notation "Hold for inspection." *Id.* sec. 10498 as amended by Act approved March 6, 1909. Sess. Laws, 1909, p. 319.

Who are warehousemen:—Every person, firm, company, or corporation, receiving cotton, tobacco, pork, grain, corn, rye, oats, wheat, hemp, whiskey, coal, any kind of produce, wares, merchandise, commodity, or any other kind or description of personal property or thing whatever, in store, or undertaking to receive or take care of the same, with or without compensation or reward therefor, shall be deemed and be held a warehouseman. Burns' Annotated Statutes, 1908, sec. 10499.

Receipt for property—Evidence:—Every warehouseman, receiving anything enumerated in the preceding section, shall, on demand of the owner thereof, or the person from whom he received the same, give a receipt therefor, setting forth the brand, quality, quantity, kind and description thereof, which shall be designated by some mark; which receipt shall be evidence in any action against said warehouseman. *Id.* sec. 10500.

Receipts negotiable:—All receipts issued by any warehouseman, as provided in this act, shall be negotiable and transferable by indorsement in blank, or by special indorsement, and with like liability as bills of exchange now are, and with like remedy thereon. *Id.* sec. 10501.

Receipts given only for property stored:—No warehouseman, or other person, shall issue any receipt or other voucher for any goods, wares, merchandise, product, or thing enumerated in section one of this act (sec. 6541) or for any other commodity or thing, to any person, company, or corporation, unless such goods, wares, merchandise, produce, property, commodity, or thing shall have been *bona fide* received into and stored by such warehouseman or other person, and shall be in store and under his control, care, and keeping, at the time of issuing such receipt. *Id.* sec. 10502.

Fraudulent receipts forbidden:—No warehouseman or other person shall issue any receipt or voucher for any goods, wares, merchandise, produce, commodity, property, or other thing, of

any description or character whatever, to any person, company, or corporation, as security for any money loaned, or for other indebtedness or indemnity, unless such goods, wares, merchandise, produce, commodity, property, or other thing, so receipted for, shall be, at the time of issuing such receipt or voucher, the property, without incumbrance, of said warehouseman; and if incumbered by prior lien, then the character, extent, and amount of that lien shall be fully set forth and explained in the receipt, and shall be actually in store and under the control of said warehouseman at the time of giving such receipt or voucher. *Id.* sec. 10503.

No receipt while one outstanding:—No warehouseman or other person shall issue any receipt or other voucher for any goods, wares, merchandise, produce, or other thing enumerated in section one of this act (sec. 6541), while any former receipt for such goods, wares, merchandise, produce or thing as aforesaid, or any part thereof, shall be outstanding and uncancelled. *Id.* sec. 10504.

Not to sell receipted property:—No warehouseman or other person shall sell or incumber, ship, transfer, or in any manner remove beyond his immediate control any goods, wares, merchandise, produce, commodity, property or chattel for which a receipt or voucher shall have been given, without the written consent of the person holding and producing such receipt. *Id.* sec. 10505.

Act extends to gauger's receipts:—The provisions of this act shall extend to gauger's receipts issued for distilled spirits which may be in the bonded warehouses of the distillers in the state of Indiana under the control of the revenue officers of the United States or under any law of the United States; and such receipts shall be transferable by indorsement as provided in section three of this act. *Id.* sec. 10506.

Penalty for cheating or swindling—Criminal and civil:—Any warehouseman or person who shall willfully, knowingly, and purposely violate any of the provisions of this act shall be deemed a cheat and swindler, and subject to indictment in a court of competent jurisdiction, and, upon conviction, shall be fined in any sum not exceeding five thousand dollars, and shall be imprisoned in the state prison for any determinate period not exceeding five years. Every person aggrieved by the violation

of any of the provisions of this act shall have and maintain an action against the person, company, or corporation violating the same, to recover all damages, immediate, consequent, and legal, which he may have sustained by reason of such violation as aforesaid, whether such person may have been convicted criminally or not. *Id.* sec. 10507.

Receipt as collateral, how sold:—When any receipt or voucher shall have been issued, as provided by this act, and used or pledged as collateral security for the loan of money, or to indemnify, for any purpose, the bank, person, or corporation to whom the same may be pledged, hypothecated, or transferred, shall have power and authority to sell the same and transfer title thereto, in such manner and on such terms as may be agreed to in writing by the parties at the time of making the pledge. *Id.* sec. 10508.

Sale of warehouse receipts:—That it shall be unlawful for any corporation, firm or person, their agents or employes, to issue, sell, pledge, assign, or transfer in this state, any receipt, certificate or other written instrument purporting to be a warehouse receipt, or in the similitude of a warehouse receipt or designed to be understood as a warehouse receipt, for goods, wares or merchandise stored or deposited, or claimed to be stored or deposited, in any warehouse, public or private, in any other state, unless such receipt, certificate or other written instrument shall have been issued by the warehouseman operating such warehouse. *Id.* sec. 10509.

False receipts, transfer.—It shall be unlawful for any corporation, firm or person, their agents or employes, to issue, sell, pledge, assign or transfer in this state any receipt, certificate or other written instrument for goods, wares or merchandise claimed to be stored or deposited, in any warehouse, public or private, in any other state, knowing that there is no such warehouse located at the place named in such receipt, certificate or other written instrument, or if there be a warehouse at such place, knowing that there are no goods, wares or merchandise stored or deposited therein as specified in such report, certificate or other written instrument. *Id.* sec. 10510.

Description in receipts:—It shall be unlawful for any corporation, firm or person, their agents or employes, to issue, sign, sell, pledge, assign or transfer, in this state, any receipt, certifi-

cate or other written instrument evidencing, or purporting to evidence, the sale, pledge, mortgage or bailment of any goods, wares or merchandise stored or deposited, or claimed to be stored or deposited, in any warhouse, public or private, in any other state, unless such receipt, certificate or other written instrument shall plainly designate the number and location of such warehouse, and shall also set forth therein a full, true and complete copy of the receipt issued by the warehouseman operating such warehouse wherein such goods, wares or merchandise are stored or deposited, or are claimed to be stored or deposited: *Provided*, That the provisions of this section shall not apply to the issue, signing, sale, pledge, assignment or transfer of *bona fide* warehouse receipt issued by the warehouseman operating public or bonded warehouses in other states, according to the laws of the state wherein such warehouses may be located. *Id.* sec. 10511.

Penalty for violating act:—Every corporation, firm or person, agent or employe, who shall knowingly violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than fifty nor more than one thousand dollars, to which may be added imprisonment in the county jail for any period not exceeding one year. *Id.* sec. 10512.

Sale of receipts, recording statement:—That all persons, firms or corporations owning and dealing in corn, wheat, oats, rye, barley or other grain who may desire to sell, transfer, assign, pledge, or hypothecate the same, or any part thereof, by issuing elevator or warehouse receipts or certificates, are hereby required to file with the recorder of deeds, in the county where any such grain is stored, a written declaration setting forth the name and residence of such person, firm or corporation, that such person, firm or corporation desires to own, keep or control a warehouse, elevator, crib or other place for the storage and keeping of grain, an accurate description of the place and locality where the same is to be kept, owned or controlled, and of the elevator, warehouse, crib or other place, the dimensions and quality thereof, and the names of any other persons than the one making the declaration, having any interest in land or structure; such declaration shall be duly acknowledged and filed for record in the same manner as instruments for the conveyance of personal property. *Id.* sec. 10513.

Certificates, sale, statement:—Any person, firm or corporation owning, keeping or controlling any such elevator, warehouse, crib, or other place for the storage of grain, and who has filed the declaration as provided in section one hereof, may execute and issue bills, certificates or warehouse receipts, for any grain that may actually be in said elevator, warehouse crib or other place described in said declaration, or for any part or quantity thereof, and may sell, convey, assign, transfer, pledge or encumber said grain, or any part or quantity thereof. But such bill, certificate, or warehouse receipt shall have written or printed on it a statement that the person, firm or corporation issuing it has complied with section one hereof, with the book and page in the recorder's office where the same is recorded, the name and address of the party issuing it, and to whom issue (d), the location of the premises and elevator, warehouse, crib or other place where the grain is stored, the date of issuance, and the quantity of grain and its kind, and shall be signed by the person, firm or corporation issuing it; and bills, certificates and receipts issued in the manner and form aforesaid shall operate and have the effect to transfer the title to the grain described in them, and vest the same in the holder thereof, and the holders thereof may sell, assign, transfer, or otherwise dispose of the same in like manner without the purchaser, assignee or holder being required to have the same recorded or give notice to protect himself against existing creditors or subsequent purchasers, as required in other cases where property is left in the possession of the vendor. *Id.* sec. 10514.

Record of receipts.—Every person, firm or corporation making the declaration and issuing receipts and certificates for grain, as herein contemplated, shall keep a regular well-bound book, wherein shall be kept and entered at the date of issuance thereof, full account of each and every receipt or certificate, with the date of issuance, number, name or person, to whom issued, the quality and kind of grain covered by such; and such book shall be subject to the inspection and examination of each and every person holding any such receipt or certificate, his agent or attorney.

Any person wrongfully altering, changing or willfully destroying any such book shall, upon conviction, be fined not exceeding one thousand dollars, and may be imprisoned in the county

jail not exceeding one year; and any person, firm or corporation issuing any receipt or certificate, without entering and preserving in such book the required memorandum shall be fined, upon conviction, not to exceed one hundred dollars for each certificate so issued and be liable for all damages sustained in consequence of such omissions. *Id.* sec. 10515.

False receipts:—Any person, firm or corporation who shall knowingly issue any such receipt or certificate for grain when the grain described is not actually in the elevator, warehouse, crib or other place mentioned therein, or shall knowingly, with intent to defraud, issue a second receipt or certificate for grain, for which, or part of which, any former receipt or receipts, certificate or certificates, are outstanding, uncancelled, and valid and subsisting, shall, besides being liable for all damages caused by such second issue, be deemed guilty of felony, and for each offense be fined not to exceed one thousand dollars, and may be imprisoned in the penitentiary not exceeding five years. *Id.* sec. 10615.

Penalties:—Any person, firm or corporation owning, possessing or controlling any elevator, warehouse, crib or other place for storing grain as provided in this act, who shall sell or remove, or knowingly permit to be removed therefrom, any grain for which any receipt or certificate has been issued and is outstanding, held by any other person than the person issuing the same, and any person knowingly receiving, or helping to remove the same, shall be deemed guilty of grand larceny and punished as provided by statute, and such grain so removed shall be deemed and regarded as stolen property and may be pursued and recovered or its value recovered by the owner and holder of said receipt or certificate. *Id.* sec. 10517.

How formed:—Any number of persons may form themselves into a corporation for the purpose of constructing warehouses in which to inspect, store and sell tobacco, by complying with the following requirements: They shall unite in articles of association, setting forth the name which they assume, the place at which they propose to costruct the warehouse, the amount of capital stock, and the number of shares into which it is divided. The names and places of residence of the subscribers, and the amount of stock taken by each, shall be subscribed to said articles of association. Whenever the stock subscribed shall

amount to the sum of six thousand dollars, copies of the articles of association shall be filed in the office of the recorder of each county in which the warehouses are to be constructed, and from that time it shall be a corporation and known by the name assumed in its articles of association. *Id.* sec. 5803.

Election of directors—Term:—Not less than five nor more than seven directors shall be elected by the stockholders of every such corporation, who shall hold their office for one year and until their successors are in like manner elected and qualified. Notice of the first election for directors shall be given by two weekly publications in some newspaper of the county, or, if no such paper be published therein, then in an adjoining county or the county nearest thereto wherein such paper is published. Said directors shall be elected by a majority of the votes given, either by the stockholders present or by written proxy from those not present; and each stockholder shall be entitled to one vote for each and every share he may hold in the capital stock of the corporation at the time of such election. *Id.* sec. 5804.

Powers—Seal:—Any such company shall be entitled to all the privileges and immunities of the laws of this state as a body politic and corporate, such as contracting and being contracted with, suing and being sued, pleading and being impleaded, defending and being defended in any court of competent jurisdiction. It may have a common seal, and may make and alter the same at pleasure. *Id.* sec. 5805.

May acquire property:—For the purpose of locating and constructing any such warehouse, it shall be lawful for such company to lease, purchase, hold, use and convey any property or estate whatsoever, real or personal, that may by such company be deemed necessary to the prosecution of its designs. *Id.* sec. 5806.

Collecting calls:—It shall be lawful for the directors to require payments from subscribers to the capital stock of the sums subscribed by them, at such times and in such proportions and on such conditions as they shall see fit, under the penalty of the forfeiture of their stock and of all previous payments thereon, or under such other penalty or forfeiture as such company may, by by-laws, prescribe. They shall give notice of the payments thus required, and of the time and place, when and where, at least thirty days previous to the time when such payments are

required to be made, in a newspaper printed in the county, or, if no such paper is published therein, then in an adjoining county or the county nearest thereto wherein such paper is published. *Id.* sec. 5807.

Shares—Increase of capital:—The shares of the corporation shall be deemed personal property, and shall be transferable in the manner prescribed by the by-laws. Any person becoming a shareholder by assignment shall succeed to all the rights and liabilities of his assignor. The directors may provide for any increase of capital stock that may be deemed advantageous to the corporation, provided the whole shall not exceed fifty thousand dollars. *Id.* sec. 5808.

Vacancies—By-laws:—Any such company may fill all vacancies occurring in its board of directors by the remaining directors, at any of its meetings, and may make, enact and publish any and all ordinances and by-laws which it may deem proper, not inconsistent with the laws of this state. *Id.* sec. 5809.

Tobacco warehouse companies—Incorporation:—That any number of persons not less than three may form themselves into a corporation for the purpose of constructing, operating and maintaining tobacco warehouses and warehouses for the storage, sale and inspection of tobacco, and for the purpose of engaging in the business of buying, selling and dealing in tobacco, by complying with the provisions of this act. The persons desiring to form such corporation shall sign, execute and acknowledge articles of incorporation setting forth the name they propose to assume, the objects and purpose of the corporation, the amount of the capital stock of such corporation and the number of shares into which the same is to be divided, together with the name of one or more of the places at which the business of such corporation is to be conducted. The names and places of residence of the subscribers and the amount of stock taken by each shall be subscribed to said articles of association. A copy of such articles of association shall be filed in the office of the recorder of the county in which the business of said corporation is to be conducted, and a duplicate thereof shall be filed in the office of the secretary of state. *Id.* sec. 5810.

Directors, terms, election:—The affairs of said corporation shall be managed by a board of directors of not less than three nor more than seven members, who shall be stockholders in such

corporation and shall be elected by the stockholders thereof, and shall hold their offices for one year and until their successors are elected and qualified. Such articles of incorporation shall designate the directors selected to serve for the first year, but an anannual election of directors shall be held every year thereafter, and notice of such election shall be given by publication for two (2) weeks in some newspaper of general circulation printed and published in the county where such corporation shall have its principal office and place of business, and if no such paper be published therein then in an adjoining county or the county nearest thereto wherein such paper is published. Said directors shall be elected by a majority of the votes given either by stockholders present, or by written proxy from those not present, and each stockholder shall be entitled to one vote for each and every share he may hold in the capital stock of such corporation at the time of such election. *Id.* sec. 5811.

Corporate powers:—Any such company shall from the time of the filing of said articles of incorporation for record in the office of the secretary of state be entitled to all the privileges and immunities of this state as a body politic and corporate, such as contracting and being contracted with, suing and being sued, pleading and being impleaded, defending and being defended in any court of competent jurisdiction, and shall have and possess all of the powers necessary to carry out the intent and purposes of such organization. *Id.* sec. 5812.

Holding and conveying property:—For the purpose of locating and conducting, maintaining and operating any such warehouse, or for the purpose of engaging in the business of buying, selling or dealing in tobacco, it shall be lawful for said company to purchase, hold, lease, use, sell and convey any property or estate of any kind, real or personal wherever the same may be situate, and wherever the said company shall conduct any such business that may be by such company deemed necessary to the transaction of its business. *Id.* sec. 5813.

Payment of capital stock:—It shall be lawful for the directors to require payments from subscribers to the capital stock of the same, as subscribed by them at such times and in such proportions and on such conditions as they shall see fit under the penalty of the forfeiture of their stock and of all previous payments thereon, or under such penalty of forfeiture as such com-

pany may by its by-laws prescribe. They shall give notice of the payments thus required and of the time and place when and where, at least thirty days pervious to the time when such payments are required to be made, in a newspaper printed in the county or if no such newspaper is published therein, then in an adjoining county, or the county nearest thereto wherein such paper is published. *Id.* sec. 5814.

Capital stock—Transfer—Increase—Limit:—The shares of stock in said corporation shall be deemed personal property and shall be transferable in the manner prescribed by the by-laws. The directors may provide for any increase of the capital stock that may be deemed advantageous to the corporation, provided the whole shall not exceed five hundred thousand ($500,000) dollars. *Id.* sec. 5815.

Vacancies on board—By-laws:—Any such company may fill all vacancies occurring in its board of directors by the remaining directors at any of its meetings, and may make, enact and publish any and all regulations and by-laws which it may deem proper, not inconsistent with the laws of this state. *Id.* sec. 5816.

Burglary:—That whoever in the night time or day time breaks and enters into any dwelling, kitchen, smokehouse, outhouse, shop, office, storehouse, business house, warehouse, mill, distillery, pottery, factory, barn, or stable, schoolhouse, church, meeting house, or building used for the purpose of religious worship, boat, wharfboat, or any water craft, car, factory, freight house, station house, depot, railroad car, interurban or street car, with the intent to commit a felony, shall be deemed guilty of the crime of burglary. Any one violating any of the provisions of this section, upon conviction of same, shall be imprisoned in the state prison not less than ten years nor more than twenty years, and be disfranchised and rendered incapable of holding any office of trust or profit for any determinate period. *Id.* sec. 2264.

Entering house to commit felony:—Whoever, in the day time or night time, enters any dwelling house, kitchen, smokehouse, outhouse, shop, office, storehouse, warehouse, mill, distillery, pottery, factory, barn, stable, schoolhouse, church, meeting house or building used for the purpose of religious worship, booth, tent, enclosed ginseng garden, boat, wharfboat, or other

water craft, car-factory, freight house, station house, depot, railroad car, interurban or street car, or other erection or enclosure, and attempts to commit a felony, shall, on conviction, be imprisoned in the state prison not less than two years nor more than fourteen years, and be disfranchised and rendered incapable of holding any office of trust or profit for any determinate period. (As amended, Acts 1907, p. 100.) *Id.* sec. 2266.

House breaking in day time to steal:—Whoever, in the day time, breaks and enters into any dwelling-house, kitchen, smoke house, outhouse, shop, office, storehouse, warehouse, mill, distillery, pottery, factory, barn, stable, schoolhouse, church, meeting-house, or building used for the purpose of religious worship, water-craft, car factory, freight-house, station-house, depot, railroad car, interurban or street car, with intent to commit the crime of larceny, shall, on conviction, be imprisoned in the county jail not less than ten days nor more than six months, or in the state prison not less than one year nor more than fourteen years. *Id.* sec. 2267.

Pure food—Cold storage regulations:—The following act entitled "An Act for the protection of the public health and the prevention of fraud and deception by regulating cold storage and refrigerating warehouses, the holding of food products stored therein and the sale of such products, and defining the duties of the state board of health in relation thereto," was approved March 2, 1911. Sess. Laws, 1911, pp. 113 *et seq.*

Section 1.—Be it enacted by the general assembly of the state of Indiana: That all food products which are placed or stored in any cold storage or refrigerating warehouse in this state shall be marked, stamped or tagged, either upon the product itself or on the original package in which it is enclosed, with the date when it is placed or stored in any such cold storage or refrigerating warehouse; and all such food products when removed from any such cold storage or refrigerating warehouse shall in addition be marked, stamped or tagged with the date when such product was removed from any such cold storage or refrigerating warehouse: *Provided, however,* That when such products are removed for interstate shipment such marking, stamping or tagging shall not be required. And for the purpose of this act a cold storage or refrigerating warehouse shall be defined as one employing refrigerating machinery or ice for the purpose of re-

frigeration, whether for public or private use, and shall not apply to ice boxes used for temporary protection only.

Sec. 2.—Storage Limit: That all food products which shall be placed or stored in any cold storage or refrigerating warehouse after the passage of this act, shall not be kept in such cold storage or refrigerating warehouse for a longer period than nine months after the same has first been placed or stored therein, nor placed or stored in any other cold storage or refrigerating warehouse after nine months from the time when such food products were first placed in a cold storage or refrigerating warehouse: *Provided, however*, That any meat, fish, butter, cheese, eggs, poultry, game, fruits, farm or garden produce, or any other perishable food stuffs which shall have been held in cold storage or refrigerating warehouse for more than nine months, shall be reported by the person, firm or corporation operating such cold storage or refrigerating warehouse to the state board of health, and any such food product shall be inspected and if found to be unfit for human food shall be delivered forthwith to and before the nearest circuit or city judge or justice of the peace who shall order that such food product shall be drenched with kerosene oil or rendered into grease and tankage or otherwise made unfit for food as the court may direct.

Sec. 3. Food Products Now in Storage:—That all food products now in any cold storage or refrigerating warehouse in this state shall be removed from cold storage and placed upon the market within nine months from the passage of this act.

Sec. 4. Non-Resident Storage—Mark:—That no food product shall be sold or offered for sale in this state which shall have been placed or stored in any cold storage or refrigerating warehouse outside of this state unless it shall have been marked, stamped or tagged as provided for in section one of this act.

Sec. 5. Sales—When Unlawful—Eggs:—That it shall be unlawful for any person, firm or corporation to sell or have in its possession with the intent of selling, or offering or exposing for sale any package, box, bale, barrel, tub or other receptacle in which any meats, fish, eggs, butter, cheese, poultry, game, fruits, farm or garden produce, or any other perishable food stuffs are packed or contained and which has been taken or removed from any cold storage or refrigerating warehouse, where the stamp

showing the date such articles of food were placed in any such cold storage or refrigerating warehouse has been removed, defaced, altered, or destroyed, or is not plainly legible, nor shall such person, firm or corporation sell, either at wholesale or retail, any storage eggs as fresh eggs, and all invoices shall plainly state whether such eggs are storage or fresh and when such eggs are sold at retail, in case eggs so sold have been in storage for thirty days, there shall be placed in or on the receptacle containing them, in full view of the public, a card not smaller than six inches in width by six inches in length, upon which shall be printed the words "cold storage," in plain gothic letters not less than two inches in length, and the wrapper, bag or container in which said eggs are delivered to the purchaser by the retailer shall be plainly stamped with the words "cold storage."

Sec. 6. Record—Receipts and Withdrawals:—That it shall be the duty of any person, firm or corporation carrying on, engaged in, or conducting a business or storing perishable food or keeping or maintaining a cold storage or refrigerating warehouse where meats, fish, butter, cheese, eggs, poultry, game, fruits, farm or garden produce, or any other perishable food stuffs are stored, to keep an accurate record of the receipts and withdrawals of all products so received or withdrawn and the state board of health shall have free access to these records at any time.

Sec. 7. License Required—Fee:—That any person, firm or corporation desiring to carry on, engage in or conduct a business of storing perishable food, or to keep, maintain or operate a cold storage or refrigerating warehouse where meats, fish, eggs, butter, cheese, poultry, game, fruits, farm or garden produce, or any other perishable food stuffs are stored, shall make application in writing to the state board of health for that purpose, in which application shall be declared the location at which said business is proposed to be carried on. Upon receipt of the application the state board of health shall cause an examination to be made into the sanitary condition of the place of business occupied by the applicant. If upon examination said place of business is found to be in a sanitary condition, clean and suitable for said purpose, the state board of health shall cause a license to be issued such applicant, authorizing such applicant to carry on said business for and during the period of one year. The said license shall be issued upon payment by such applicant of a

license fee of ten ($10) dollars to the treasurer of state. The license fees so paid shall be held by the treasurer of state as a fund for the enforcement of this act and at the end of each fiscal year the unexpended balance shall revert to the general fund. All disbursements necessary for the carrying out of this act shall be paid by warrant drawn upon the treasurer of state after the filing with the auditor of state all vouchers and bills as now provided for by law. In the event that said place of business shall be conducted in an unsanitary manner or in a manner contrary to the provisions of this act, it shall be the duty of the state board of health to revoke said license and to close the cold storage or refrigerating warehouse until such time as it may again be in a sanitary condition, clean and suitable for use.

Sec. 8. State Board of Health—Duties:—That it shall be the duty of the state board of health to enforce the provisions of this act and for this purpose the state food and drug commissioner, the food inspectors of the state board of health, and the state, county and city and town health officers shall have full power at all times to enter every building, room, basement or cellar occupied or used or suspected of being occupied or used as a cold storage or refrigerating warehouse, and to inspect the premises, and if upon such inspection any cold storage or refrigerating warehouse of any employer, employe, or other person is found to be violating any of the provisions of this act, or if the meats, fish, eggs, butter, cheese, poultry, game, fruit, farm or garden products or any other perishable food stuffs stored therein, are not marked, stamped or tagged in accordance with the provisions of this act, or are found to be unfit for food, the officer or inspector making the inspection shall furnish evidence of said violation to the prosecuting attorney of the county or circuit wherein such violations occur, who shall prosecute all persons violating any of the provisions of this act. The state board of health shall adopt such rules as may be necessary to enforce this act and violation of said rules shall be punished on conviction as set forth in section 9 of this act.

Sec. 9. Penalty:—That any person, firm or corporation, violating any of the provisions of this act shall upon conviction be punished for the first offense by a fine of not less than $25.00 nor more than $50.00; for the second offense by a fine of not less than $50.00 nor more than $100.00; and for the third and sub-

sequent offenses by a fine of $200.00 and imprisonment in the county jail for not less than thirty (30) nor more than ninety (90) days and each day on which the cold storage or refrigerating warehouse is found to be in violation thereof, or the employer, employe, or other person is found to be violating any of the provisions of this act, shall constitute a distinct and separate offense.

Sec. 10. Repeal:—All acts and parts of acts in conflict with the provisions of this statute are hereby repealed.

DECISIONS AFFECTING WAREHOUSEMEN

A.

Bailment—What constitutes, contract of:—A receipt drawn by a warehouseman for a certain quantity of wheat "received in store subject to our charges. Fire at owner's risk" constitutes a contract of bailment. *Drudge* v. *Leiter et al.*, 18 Ind. App. 694.

Same—Injury:—In an ordinary case of bailment, uncontrolled by special stipulation, and in the absence of negligence or misconduct by the bailee, an injury to the property bailed falls on the bailor. *Conwell* v. *Smith,* 8 Ind. 530.

Same—Destroyed by accident:—Where property in the custody of a bailee is destroyed accidentally, without any fault on his part, the bailee is not liable. *Drudge* v. *Leiter et al.,* 18 Ind. App. 694.

Bailment and sale:—Where it appeared from the evidence that wheat which had been delivered to dealers had been placed in railroad cars for shipment and not stored in warehouse, and where they retain it for the purpose of obtaining a better price therefor, it was *held* that this constituted a sale of the wheat and not a bailment, and, in event of destruction by fire, the dealers were liable for the unpaid price thereof. *Woodward et al.* v. *Boone et al.,* 126 Ind. 122.

Same—Agreement to deliver flour and bran for wheat deposited:—Defendants were dealers in grain, conducting a warehouse and flour mill, and the plaintiff agreed to furnish wheat to them, for which the defendants were to deliver, on request, a designated number of pounds of flour and bran for each bushel of wheat de-

livered. The flour and bran were to remain in the possession of the defendants subject to delivery on demand of the plaintiff. Before the delivery of all of the flour and bran to the plaintiff, the mill and warehouse were burned without any negligence on the part of the defendants. Under the above facts, it was *held* that it was essentially a contract of sale, not a bailment, and that the defendants were, therefore, liable for the value of the flour and bran undelivered. *Woodward et al.* v. *Semans et al.*, 125 Ind. 330.

Same—Commingling of grain:—The plaintiff delivered, to the defendant warehouseman, a large quantity of grain and took a receipt therefor in which it was stated that the grain had been received to be stored free for thirty days, after which time there would be a certain charge each month per bushel. The receipt further stated that the defendants agreed to pay the market price for such grain at any time between the date of issuance thereof and nearly a year thereafter, and that the grain was held subject to owner's risk of loss by fire or heating. The evidence also showed that the defendants' warehouse and most of the contents had been destroyed by fire without any fault or negligence on their part. After the fire the defendants had some grain which was not destroyed and which they distributed, *pro rata*, among their depositors to all those who would accept, the plaintiffs declining to do so. The court stated as conclusions of law, first, that the title to the grain remained in the plaintiffs and that the defendants were liable as bailees; second that the defendants were not liable to the plaintiff for the value of such grain nor for damages resulting from its destruction; third, that the law is with the defendants and that the plaintiff should take nothing by his suit. It was *held* on appeal that the conclusions of law were correct, that the contract was one of bailment and not of sale and therefore the judgment given for the defendant was affirmed. *McGrew* v. *Thayer et al.*, 24 Ind. App. 578.

B.

Same—Bailment distinguished from sale—Rule stated:—Where a grain dealer, operating a warehouse, receives grain on deposit for the owner, to be commingled with other grain in a common receptacle, from which sales are made by the dealer in the regular course of business, the dealer keeping constantly on hand sufficient grain of like kind and quality for the depositor and all other

receipt holders, ready for delivery to them upon demand, the contract is one of bailment. *Thompson* v. *Jordan*, 164 Ind. 551, 554.

Sale distinguished from bailment—Rule stated:—Where an owner, knowing that the established custom at the elevator is to mix all grain, whether purchased outright by the dealer or received by him in store for others, and that such commingled mass is subject to sale by the dealer without the assent of the depositors, delivers grain at the elevator *without any agreement at the time that the same shall be held in store*, and without disclosing the purpose of the delivery, whether for sale or to be placed in store, *the matter must be treated as a sale* and not as a bailment. *Lyon* v. *Lenon*, 106 Ind. 567; cited with approval in *Thompson* v. *Jordan*, 164 Ind. 551, 556.

Warehouseman—Manufacturing company cannot act as:—A corporation organized under the laws for the incorporation of manufacturing and mining companies, for the manufacture and sale of nails and other products of steel and iron, is not authorized to engage in the business of a public or private warehouseman, or to issue warehouse receipts. *Franklin Nat. Bank et al.* v. *Whitehead et al.*, 149 Ind. 560.

Same—Same—Statute construed:—A manufacturing corporation not empowered to do the business of a public warehouseman cannot be authorized to do so by the county auditor upon petition, under sec. 8704, Burn's R. S. 1894, providing that any person or incorporated company desiring to keep a public warehouse shall be entitled to do so upon receiving a permit therefor from the county auditor of the county in which such warehouse shall be kept. *Id.*

Same—Same—Creditors bound to know powers of corporation:—Creditors of a corporation organized under the laws for the incorporation of manufacturing and mining companies are bound to know that such corporation has no power to carry on either a public or private warehouse or issue warehouse receipts. *Id.*

Same—Same—Contract ultra vires—Void contracts:—The doctrine, "that when a corporation enters into a contract merely beyond its powers, which if made by a private person would have been binding upon him, and such contract has been per-

formed by the other party thereto, the corporation will not be permitted to deny its power to make such contract," does not apply to contracts that are forbidden by statute, or are contrary to public policy. *Id.*

Ordinary care:—Warehousemen and wharfingers are not responsible for all goods intrusted to their care and not lost through the act of God or public enemy; but are only responsible for ordinary care and diligence. *Cox et al.* v. *O'Riley and Another*, 4 Ind. 368; *Cincinnati & Chicago A. L. R. R. Co.* v. *McCool*, 26 Ind. 140.

Conversion—Demand and refusal:—Where the bailor demands the property intrusted to his bailee and pays, or makes a valid tender to pay, the storage charges due to date, if the warehouseman refuse to deliver, this constitutes a conversion. *Pribble* v. *Kent*, 10 Ind. 325.

Same—Action for:—Where a warehouseman sold wheat on deposit and appropriated the money to his own use, an action against such warehouseman, waiving the conversion and seeking a recovery upon an implied contract, must be for the price received for the wheat, and not for the value of the converted wheat. *Drudge* v. *Leiter et al.*, 18 Ind. App. 694.

Same—Plaintiff must be owner or entitled to possession:—A person cannot maintain an action for conversion where he neither owns nor is entitled to possession of the property alleged to have been converted. *Baker* v. *Brown*, 17 Ind. App. 422.

Same—Pleadings—Sufficiency of compliant:—In an action against a warehouseman for the conversion of certain corn deposited with him, the complaint should allege that prior to the commencement of the action defendant did not have a sufficient quantity of corn of the kind and quality deposited with him with which to meet the demand by plaintiff; that a demand was made; that storage charges or expenses were tendered or that storage charges had not attached. *Baker* v. *Born*, 17 Ind. App. 422.

Same—Same:—An allegation in a complaint in an action against a warehouseman for conversion of a quantity of corn deposited with him, that on and before a specified date defendant had no corn in his warehouse or under his control, of the quality of the plaintiff's corn deposited prior to a specified earlier date, but had sold such corn, is not equivalent to an allegation that on

a certain day the defendant did not have in his warehouse sufficient corn of the kind and quality deposited by plaintiff. *Id.*

H.

Sale for storage charges without notice—Conversion:—Sale for storage charges without notice to the owner constitutes a conversion of the property. *Jordan* v. *Shireman,* 28 Ind. 136.

Lien for charges:—The bailor of goods, deposited in a warehouse, retains the property in the goods, and the warehouseman has a lien thereon for his charges. *Pribble* v. *Kent and Another,* 10 Ind. 325.

I.

Commingling of grain—Tenants in common—Destruction by fire—Liability of warehouseman:—Owners of wheat deposited with a warehouseman engaged in receiving grain in store and mingling same in common receptacle and selling and shipping the grain so stored, are owners as tenants in common of the entire quantity of the grain so commingled, and a depositor of grain who has so deposited a certain quantity is an owner of an undivided portion of the whole amount, not only while his grain is actually present in the common store, but his title as tenant in common will continue as long as any grain so deposited by any of the depositors remains in store, unless withdrawn or transferred by him. If at any time the whole mass is less than the aggregate deposits, then each depositor owns such proportion of the grain in store as his deposit bears to the aggregate of all the deposits; and if the warehouse and contents be destroyed by fire, without fault of the warehouseman, at a time when there is not a sufficient amount of grain in the warehouse to satisfy the demands of all depositors, by reason of sales made thereof by the warehouseman, a depositor can recover for the value of the grain deposited by him, less his proportionate share of the aggregate amount on deposit at the time of the fire. *Drudge* v. *Leiter et al.,* 18 Ind. App. 694; *Rice et al.* v. *Nixon,* 97 Ind. 97; *Schindler et al* v. *Westover et al,* 99 Ind. 396.

Same—Sale—Innocent purchaser protected:—Where grain is mixed in a common mass in a warehouse, with grain belonging to the owner of the warehouse and the warehouseman is regularly selling grain to purchasers from such common mass, such depositor cannot set up his title to the grain against that of an

innocent purchaser. *Preston et al.* v. *Witherspoon et al.*, 109 Ind. 457.

M.

Pledge—Facts held to constitute a change of possession and a valid pledge:—A wholesale leather dealer walled off a part of the basement of his place of business and let it at a nominal rent to a warehouse company. The doors to this part with padlocks bearing the name of the company, were kept locked and the warehouse company only had the keys. The warehouse company had a key to the front door and access to its premises at all times. Two large signs of the warehouse company were on the outside. The warehouse company issued receipts to the dealer for goods stored which goods he could remove upon payment of charges. These receipts the dealer negotiated to secure loans. *Held*, that the receipts issued were valid, and their negotiation as security constituted a pledge of the property covered, valid against attaching creditors. That if not valid as warehouse receipts, the transaction is regarded as constituting a pledge of such property valid against attaching creditors. *Union Trust Co.* v. *Wilson*, 198 U. S. 530.

Same—Receipts of private warehouseman against his own goods—Creditors protected—Bankruptcy:—Dealers in apples and other produce issued a receipt representing their own property stored in their own warehouse and pledged the same to secure the payment of a loan. Subsequently they were adjudged bankrupts, and the assignee took possession of and sold all their property, including the apples represented by the pledged receipt. The pledgee, a national bank, brought an action, asking that a lien, on the fund arising from the sale of the apples, be declared in its favor. It appeared from the evidence that the defendants had never been engaged legally in the business of warehousemen, and, on appeal, it was *held* that the receipt which the bank held was not a warehouse receipt within the meaning of the statute, and that the bank must stand as a common, instead of a preferred, creditor of the bankrupts. *Adams* v. *Merchants' National Bank of Indianapolis*, 2 Fed. Rep. 174.

N.

Cold storage—Injury of deleterious odors—Contract to keep the goods therein—Breach of:—The defendant, a warehouseman,

was sued by the plaintiff for damage to a large quantity of butter which was stored with the former in the cold storage rooms in his warehouse. The complaint alleged that owing to the fact that the butter had become impregnated with deleterious odors and flavors, that it was greatly diminished in value. It being shown on the trial that the butter had been so injured, judgment was given for the plaintiff. *Holt Ice & C. S. Co.* v. *Arthur Jordan Co.*, 25 Ind. App 314.

Loss by accident—Negligence must be shown:—Where goods intrusted to a warehouseman are accidentally destroyed, there being no negligence shown on his part, he is not liable for their loss. *Drudge* v. *Leiter et al.*, 18 Ind. App. 694.

Evidence—Burden of proof—Prima facie case—Negligence:—In an action against a warehouseman for the loss of butter stored with him in his cold storage department, the court instructed the jury, in effect, that the general rule was that the burden of proof was on the plaintiff to prove negligence, but that when the bailor had proved delivery to the warehouseman and the return of the butter in a damaged condition, that the plaintiff had made out a *prima facie* case and that the burden then shifted to the warehouseman to account for the injury in some manner consistent with the exercise of ordinary care on his part. It was *held* that this instruction was substantially correct and the case was affirmed on appeal, the court observing, however, that, strictly speaking, there was no shifting of the burden of proof and that it remained upon the plaintiff throughout. That it might be true that the burden of the proceeding did shift; that when the bailor had shown a delivery in good condition and a failure to deliver on demand or a delivery in a damaged condition, the *onus* was upon the defendant to prove that the injury was caused without his fault, the plaintiff having made out a *prima facie* case against the warehouseman. *Holt Ice & C. S. Co.* v. *Arthur Jordan Co.*, 25 Ind. App. 314.

Same—Best evidence to prove condition of eggs:—The best evidence to prove the condition of eggs alleged to have been injured while in cold storage is the testimony of the candler who examined them. An unsigned memorandum made at the time by another person and transcribed by a bookkeeper in the employ

of the plaintiff does not constitute the best evidence as to the condition of the eggs. *Adams et al.* v. *Sullivan*, 100 Ind. 8.

O.

Measure of damages—Value on date of demand:—Where the owner of goods stored with a warehouseman demands their return after paying charges and is met with a refusal, the measure of damages is their value at the time of demand and refusal. *Pribble* v. *Kent*, 10 Ind. 325; *Stevens* v. *Low*, 2 Hill, 132.

Same—Place of injury—Average price:—In an action for the recovery of the value of eggs injured while being in cold storage, the court instructed the jury as follows: "That plaintiff is, however, entitled to recover the highest market price he could have obtained, at the time of the injury, for the goods, had the defendants fully performed their duty and properly preserved the goods during the time they were bound under their contract to keep them in storage." It was *held* that, aside from the obscurity of the phraseology of this instruction, it was erroneous, in so far as it stated to the jury that, in event of a finding for the plaintiff, the eggs should have been estimated at the highest market value which the plaintiff could have obtained for them, whether by shipment or otherwise, at the time they were injured. The jury ought to have been told that, in assessing the damages, the eggs should have been estimated according to the market value in the place where they were injured; *further*, where the market is fluctuating and the prices at the time of injury were indefinite, the average range of price about the time affords the proper standard of the market value. *Adams et al.* v. *Sullivan*, 110 Ind. 8.

P.

Insurable interest—Grain commingled:—It appeared that the plaintiffs, commission merchants, engaged in buying and selling grain, in connection with their business owned and conducted a grain elevator in the usual manner. Those who took receipts from the plaintiffs knew that their grain could never be distinguished from the mass with which it was mingled. The plaintiffs insured in their own name, with the defendant, the grain stored to the full value thereof. In an action for the recovery of the amount of the policy, it was *held* that the plaintiffs had an insurable interest therein and that the defendant was liable to

them for the amount of the loss. *Baxter* v. *Hartford Fire Ins. Co.*, 12 Fed. Rep. 481.

Q.

Warehouse receipt—Representations:—Warehouse receipts represent as true, two very essential things: That the warehouseman received the property mentioned in the receipts, as warehouseman, and that it will be delivered only on the return of the certificate, properly indorsed. If the warehouseman allows the goods, represented by the receipts, to be withdrawn without the knowledge of the person, who had relied upon the representations in the receipts, he must bar the loss. *Babcock et al.* v. *Peoples' Savings Bank*, 118 Ind. 212.

Same—Contract:—A warehouse receipt is a contract of bailment and parol evidence is not receivable to vary its terms. *Toner et al.* v. *Citizens' State National Bank*, 25 Ind. App. 29.

Same—General rule—A contract—Parol evidence—Custom:—As a general rule, a warehouse receipt is not a contract and parol evidence may be admitted touching its subject-matter, while the rule in regard to contracts generally is that such evidence is not admissible. A receipt, however, may be so drawn as to constitute a contract, and in the interpretations or constructions of a contract established customs may be considered. *Pribble* v. *Kent*, 10 Ind. 325.

Same—Construction—Commercial usage:—A receipt given by a warehouseman for wheat received may be construed by adopting the meaning of its own terms as explained by commercial usage. *Drudge* v. *Leiter et al.*, 18 Ind. App. 694.

Same—Delivery of constitutes delivery of property represented:—The delivery of a warehouse receipt is equivalent to a delivery of the property represented thereby. *Gibson* v. *Stevens*, 3 How. 384.

Same—Mining and manufacturing company cannot issue:—A corporation organized under the mining and manufacturing laws is not authorized to engage in the warehouse business or to issue warehouse receipts. *Franklin National Bank et al.* v. *Whitehead et al.*, 149 Ind. 560.

Same—Issued to secure warehouseman's own debt—Knowledge—Public and private warehouseman:—A *public* warehouseman has no power to issue warehouse receipts upon his own prop-

erty in his possession, and deliver the same as a pledge to secure an indebtedness. Parties dealing with a public warehouseman are *held* to know that he has no such power. If a private warehouseman has such power it is by virtue of section 8724, Burn's R. S. 1894. *National Bank et al.* v. *Whitehead et al.*, 149 Ind. 560.

Same—Same—Not a warehouse receipt:—Where a debtor who is not a warehouseman issue a receipt purporting to be a warehouse receipt, on property in his possession and owned by him, for the sole purpose of securing a creditor, the same is not in any sense a warehouse receipt. *Id.*

Same—Negotiability—Private warehouseman:—Receipts issued by a private warehouseman against his own property are not warehouse receipts within the meaning of the act of March 9, 1875. *Adams* v. *Merchants' National Bank*, 2 Fed. Rep. 174.

Same—As collateral security—Without indorsement—Pledgee takes subject to equities:—The plaintiff took a warehouse receipt issued by the defendant warehouseman as security for the payment of indebtedness due the warehouseman from the person to whom the receipt was issued. The receipt was not indorsed to the plaintiff but was simply delivered to him. Default being made in the payment of the indebtedness, the plaintiff instituted an action against the warehouseman for the recovery of the property represented by the receipt. The person to whom the receipt was issued was made a party defendant to the suit and he defaulted. The defendant warehouseman offered evidence to show that the person to whom the receipt was issued was indebted to him and in his motion for a new trial claimed that the damages were excessive and that he should have been given credit for this sum. It was *held* on appeal that this was correct, that the plaintiff had taken the receipt without indorsement and that therefore the claim of the defendant warehouseman against the person to whom the receipt was issued was valid. The case was therefore reversed and remanded. *Toner et al.* v. *Citizens' State National Bank*, 25 Ind. App. 29.

Same—Delivery of goods without surrender of receipt—Warehouseman liable—Bona fide holder protected:—The plaintiff, in good faith, loaned to a commission merchant $4,000, and accepted as security therefor a warehouse receipt issued by the defendant

to the commission merchant, in which it stated that the flour represented by the receipt was deliverable only upon the return thereof, properly indorsed, and on payment of charges and insurance. Subsequently, and without plaintiff's knowledge, defendant allowed the commission merchant to remove the flour represented by the receipt. The court *held* that this constituted a conversion for which the defendant was liable to the plaintiff, *Babcock et al.* v. *Peoples' Savings Bank*, 118 Ind. 212.

R.

Bill of lading—Parol evidence:—A bill of lading, in so far as it is a receipt, may be explained, varied or even contradicted by parol evidence; but as a contract, expressing the terms and conditions upon which the property is to be transported, it is to be regarded as merging all prior and contemporaneous agreements of the parties, and, in the absence of fraud, concealment or mistake, its terms or legal import, when free from ambiguity, cannot be explained or added to by parol. *Louisville, E. & St. L. R. R. Co.* v. *Wilson et al.*, 119 Ind. 352; *Indianapolis & C. R. R. Co.* v. *Remmy*, 13 Ind. 518; *Snow* v. *Indiana, etc, R. W. Co.*, 109 Ind. 422.

CHAPTER XV

IOWA

LAWS PERTAINING TO WAREHOUSEMEN

The Uniform Warehouse Receipts Act is in force in Iowa. It was approved April 1, 1907, see Laws of Iowa, 32 G. A. 1907, Ch. 160, p. 157, and Supplement to the Code of Iowa, 1907, Title XV, Ch. 10a, p. 786; see also this volume p. 1.

With the exception of the last two sections which are omitted, and in lieu of section 60 of the Uniform Warehouse Receipts Act, provision is made for the repeal of section 3129 of the code.

Elevator or warehouse certificates:—All persons, firms or corporations engaged in owning or dealing in grains, seeds or other farm products; the slaughtering of cattle, sheep and hogs, and dealing in the various products therefrom; the buying or selling of butter, eggs, cheese, dressed poultry or other commodities; who own or control the buildings wherein any such business is conducted, or such commodities stored, may issue elevator or warehouse certificates for any of such commodities actually on hand and in store, the property of the person, firm or corporation issuing such certificate, and may by such method sell, assign, transfer, pledge or incumber such commodity to the amount described in such certificate. Such certificates shall contain the name and address of the person, firm or corporation issuing them, and the name and address of the party to whom issued, the location of the elevator, warehouse, building or other place where the commodity therein described is stored, the date of the issuance of such certificate, the quantity of each commodity therein mentioned, the brands or marks of identification thereon, if any, and be signed by the person or firm issuing the same, unless issued by a corporation, in which case they shall be signed by such corporation by its secretary or business manager if it has such manager other than its secretary. Code of Ia. 1897, sec. 3122.

Declaration:—Before any such person, firm or corporation is authorized to issue such elevator or warehouse certificates, he or it must file in the office of the recorder of deeds, in the county where any such elevator, warehouse or other building is situated, a written declaration, giving the name and place of residence or location of such person, firm or corporation, that he or it designs keeping or controlling an elevator, warehouse, crib or other place for the sale and storage of commodities mentioned in the preceding section, an accurate description of the elevator, warehouse, crib or other building to be kept or controlled, and where the same is or is to be located, the name or names of any person, other than the one making such declarations, who has any interest in such elevator, warehouse or other building, or in the land on which it is situated, such declaration to be signed and acknowledged by the party making the same before some officer authorized to take acknowledgments of instruments, and recorded in the chattel mortgage record, the party making such declaration to be treated as the vendor in indexing such declaration, and the public as vendee. *Id.* sec. 3123.

Effect of certificate—Assignment:—Each certificate issued by any person, firm or corporation shall have printed on the back thereof a statement that the party issuing it has complied with the requirements of the preceding section, giving the book, page, and name of the county where the record of such declaration may be found; and, when such certificate is so issued and delivered, it shall have the effect of transferring to the holder thereof the title to the commodities therein described or enumerated, and shall be assignable by written indorsement thereon, signed by the lawful holder thereof, which shall transfer the title of commodities therein enumerated, and be presumptive evidence of ownership in such holder. No record or other notice shall be necessary to protect the rights of the holder of the certificate as against subsequent purchasers of the property. *Id.* sec. 3124.

Registration of certificates and transfers:—All certificates given under the provisions of this chapter shall be registered by the party issuing them in a book kept for that purpose, showing the date thereof, the number of each, the name of the party to whom issued, the quantities and kinds of commodities enumerated therein, and the brands or other distinguishing marks thereon, if any, which book shall be open to the inspection of

any person holding any of the certificates that may be outstanding and in force, or his agent or attorney; and when any commodity enumerated in any such certificate is delivered to the holder thereof, or it in any other manner becomes inoperative, the fact and date of such delivery or other termination of such liability shall be entered in such register, in connection with the original entry of the issuance thereof. *Id.* sec. 3125.

Property subject to certificate:—No person, firm or corporation shall issue any elevator or warehouse certificate for any of the commodities enumerated in this chapter unless such property is actually in the elevator or warehouse or other building mentioned therein as being the place where such commodity is stored, and it shall remain there until otherwise ordered by the lawful holder of such certificate, subject to the conditions of the contract between the warehouseman and the person to whom such certificate was issued, or his assignee, as to the time of its remaining in store; and no second certificate shall be issued for the same property or any part thereof while the first is outstanding and in force, nor shall any such commodities be by the warehouseman sold, incumbered, shipped, transferred or removed from the elevator, warehouse or other building where the same was stored at the time such certificate was issued, without the written consent of the holder thereof. *Id.* sec. 3126.

Section 2171 of the Code of 1873 (containing provisions similar to above) construed:—A warehouse receipt issued to the proprietor of the warehouse against his own goods solely for the purpose of using the same as collateral security, *held* invalid within the meaning of section 2171 of the Code which contains provisions similar to the above. *Sexton & Abott* v. *Graham et al.*, 53 Ia. 181.

Damages:—Any one injured by the violation of any of the provisions of this chapter may recover his actual damages sustained on account thereof, and if willfully done, in addition thereto, exemplary damages in any sum not exceeding double the actual damages, which actual damages shall be found and returned by special verdict. Code of Ia., 1897, sec. 3127.

Section 2175 of the Code of 1873 (containing provisions similar to above) construed:—In order to hold a warehouseman liable for exemplary damages under the above section, it must be shown that he was guilty of a willful departure from his

duties as a warehouseman and a mere failure to observe all the legal requirements in attempting to enforce his right of sale is not sufficient. *Jeffries* v. *Snyder*, 110 Ia. 359.

Penalties:—Any person who shall willfully alter or destroy any register of certificates provided for in this chapter, or issue any receipt or certificate without entering and preserving in such book, the registered memorandum; or who shall knowingly issue any certificate herein provided for when the commodity or commodities therein enumerated are not in fact in the building or buildings it is certified they are in; or shall, with intent to defraud, issue a second or other certificate for any such commodity, for which, or for any part of which, a former valid certificate is outstanding and in force; or shall, while any valid certificate for any part of the commodities mentioned in this chapter is outstanding and in force, sell, incumber, ship, transfer, or remove from the elevator, warehouse or building where the same is stored, any such certified property, or knowingly permit the same to be done, without the written consent of the holder of such certificate; or if any person knowingly receives any such property or helps to remove the same, he shall, upon conviction, be punished by fine not exceeding ten thousand dollars, or by imprisonment in the penitentiary not exceeding five years. Code of Ia., 1897, sec. 3128.

Section 2171, Code 1873 (containing similar provisions to above) construed:—Weighmasters' tickets *held* not warehouse receipts in meaning of similar provisions to above. *Cathcart* v. Snow, 64 Ia. 584.

Certificate as evidence—Lien:—All warehouse certificates or other evidences of the deposit of property, issued by any warehouseman, wharfinger or other person engaged in storing property for others, shall be in the hands of the holder thereof presumptive evidence that the title to the property therein described is in the holder of such instrument. Such property shall remain in store until otherwise ordered by the holder of such certificate or other evidence of deposit, and shall not be removed by such warehouseman, or knowingly suffered to pass from his control, without the written consent of the depositor or his assignee, and shall be subject to all just charges for storage thereof; and such warehouseman or other depositary

shall have a lien thereon for such charges and may retain possession thereof until they are paid. Code of Ia., 1897, sec. 3129.

Unclaimed property—Lien for charges:—Property transported by, or stored or left with, any forwarding and commission merchant, express company, carrier or bailee for hire shall be subject to a lien for the lawful charges thereon for the transportation and storage thereof, or charges and services thereon or in connection therewith; and if any such property shall remain in the possession, unclaimed, of any of the persons named in this section for three months, with the just charges thereon due and unpaid, such person shall first give notice of the amount of the charges thereon to the owner or consignee thereof, if his whereabouts is known, if not, he shall go before the nearest justice of the peace, and make an affidavit, stating the time and place where such property was received, the marks or brands by which the same is designated, if any, and, if not, then such other description as may best answer the purpose of indicating what the property is, and the probable value of the same, and to whom consigned, also the charges paid thereon, accompanied by the original receipt for such charges and by the bill of lading, also any other charges due and unpaid, and whether the whereabouts of the owner or consignee is known to the affiant, and whether such notice was first given to him as herein provided; which affidavit shall be filed by the justice for the inspection of any one interested therein, and an entry made in the estray book of the substance of the affidavit, and a statement when, where and by whom made. *Id.* sec. 3130.

Section 26, General Statutes, chapter 107 of Laws 1873 (containing provisions similar to above), construed:—Under similar provision to the above, it was *held* that the notice to the owner must be given before the sale and that if this be done the statute is complied with. It is not necessary that in every case the notice be given to the owner before the expiration of three months from the receipt of the goods. *Jeffries* v. *Snyder*, 110 Ia. 359.

Sale—Notice:—If the property remains unclaimed and the charges unpaid, the person in possession, if the probable value does not exceed one hundred dollars, shall advertise the same

for fourteen days, by posting notices in five of the most public places in the city or locality where said property is held, giving such description as will indicate what is to be sold; if the goods exceed the probable value of one hundred dollars, the length of notice shall be four weeks, and there shall be a publication thereof for the same length of time in some newspaper of general circulation in the locality where the property is held, if there be one, and, if not, then in the next nearest newspaper published in that neighborhood, at the end of which period, if the property is still unclaimed or charges unpaid, it may be sold by him at public auction, between the hours of ten o'clock a. m. and four o'clock p m., for the highest price the same will bring, which sale may be continued from day to day, by public announcement to that effect at the time of the adjournment, until all the property is sold; and from the proceeds thereof all charges, costs and expenses of the sale shall be paid, which sales shall be conducted after the manner of sheriffs' sales, and like costs taxed for like services. Code of Ia., 1897, sec. 3131.

Section 2179 of the Code of 1873 (containing provisions similar to above) construed:—Whether or not the value of the goods is less or more than one hundred dollars, and whether or not the notices were posted in such places as to conform to the requirements of similar provisions to the above, *held* proper questions for the jury. *Jeffries v. Snyder*, 110 Ia. 359.

Perishable property:—Fruit, fresh fish, oysters, game and other perishable property thus held shall be retained twenty-four hours, and, if not claimed within that time and charges paid, after the proper affidavit is made as required by the second preceding section, may be sold either at public or private sale, in the discretion of the party holding the same, for the highest price that the same will bring, and the proceeds of the sale disposed of as provided in the last preceding section. In either case, if the owner or consignee of said unclaimed property resides in the same city, town or locality in which the same is held, and is known to the agent or party having the same in charge, then personal notice shall be given to him in writing that the goods are held subject to his order on payment of charges, and that, unless he pays the same and removes the property, it will be sold as provided by law. Code of Ia., 1897, sec. 3132.

Disposition of proceeds:—After the charges on the property and the costs of sale have been taken out of the proceeds, the seller shall deposit the excess with the county treasurer of the county where the goods were sold subject to the order of the owner, take a receipt therefor, and deposit the same with the county auditor. At the same time he shall also file a verified schedule of the property with the treasurer, giving the name of the consignee or owner, if known, of each piece of property sold, the sum realized from the sale of each separate package, describing the same, together with a copy of the advertisement hereinbefore provided for, and a full statement of the receipts of the sale, and the amount disbursed to pay charges and expenses of sale, which shall all be filed and preserved in the treasurer's office for the inspection of any one interested in the same. *Id.* sec. 3133.

Duty of treasurer—Refunding to owner:—If the money remains in the hands of the treasurer unclaimed, he shall place the same to the credit of the county in his next settlement, and if it so remains unclaimed for one year, it shall be paid to the school fund; but any claimant therefor may any time within ten years appear before the board of supervisors and establish his right to the same by competent legal evidence, in which case the original sum deposited shall be paid him out of the county treasury. *Id.* sec. 3134.

False warehouse receipts—Penalty:—If any person sell, transfer or dispose of any receipt or voucher, given or purporting to have been given by any person for property in store, knowing that such person has not in his possession such property, or any part thereof, he shall be fined not exceeding one thousand dollars and imprisoned in the penitentiary not exceeding five years. *Id.* sec. 5068.

Section 4088 of the Code of 1873 (containing provisions similar to above) construed:—Where a warehouseman shipped wheat out of the state, without the return of the warehouse receipt, *held*, under section 4088 of the Code of 1873, that he was criminally liable, that such statute was for the protection of the holder of the receipt and also third persons. Evidence tending to show the shipment to have been made with consent of owner *held* inadmissible. *State* v. *Stevenson*, 52 Ia. 701.

Disagreements adjusted by railroad commissioners:—That whenever a disagreement arises between the owner of an elevator or grain warehouse, coal shed, ice house, buying station, flour mill, or any other building used for receiving, storing or manufacturing any article of commerce transported or to be transported, situated on a railroad right of way, or on land owned or controlled by a railroad company, and such railroad company, as to the terms and conditions on which the same is to be continued thereon, or removed therefrom, or whenever application is made by any person, firm or corporation for the right to a site for such elevator or grain warehouse, coal shed, ice house, buying station, flour mill, or any other building used for receiving, storing or manufacturing any article of commerce transported or to be transported, and such railway company and said applicant cannot agree as to whether said elevator or grain warehouse shall be so placed on said right of way or on property owned or controlled by the railroad company, or as to the character of the buildings to be erected and placed thereon, or the place where the same is to be so erected and maintained, or as to the terms and conditions under which the same may be so placed or operated, then, and in every such event on written application to the board of railroad commissioners by such railroad company, person, firm or corporation the said board of railroad commissioners shall have authority, and it is hereby made their duty, as speedily as possible after the filing of such application, to hear and determine such controversy, and make such order in reference thereto as shall be just and right between the parties under all the facts in the case, which order shall be enforced as other orders of said commission. An Act relating to elevators and warehouses, coal sheds, ice houses, buying stations, flour mills and other buildings on railroad land, and prescribing methods and conditions of procuring and holding sites therefor, and liability for loss or destruction thereof. Approved April 17, 1913. Laws Iowa 1913, page 201, Chap. 178, Sec. 1.

Railroad company's liability defined:—In the event that any elevator, warehouse, coal shed, ice house, buying station, flour mill or any other building used for receiving, storing or manufacturing any article of commerce transported or to be transported, situated on the right of way or other land of a railroad company shall be injured or destroyed by the negligence of any railroad company, or the servants or agents of any rail-

road company in the conduct of the business of such company, the railroad company so causing such injury or destruction shall be liable therefor to the same extent as if such elevator, warehouse, coal shed, ice house, buying station, flour mill or any other building used for receiving, storing or manufacturing any article of commerce transported or to be transported was not situated on the right of way or other land of such railroad company, any provision in any lease or contract to the contrary notwithstanding. *Id.* Sec. 2.

COLD STORAGE.

Terms defined:—The term "cold storage" as used in this act shall be construed to mean a place artificially cooled to a temperature of 40 degrees F. or below, but shall not include such a place in a private home, hotel, or restaurant, or to refrigerator cars.

The term "cold stored" as used in this act shall be construed to mean the keeping of "articles of food" in "cold storage" for a period exceeding thirty days.

The term "articles of food" as used in this act shall be construed to mean and include fresh meat, and fresh meat products except in process of manufacture, fresh fruit, fish, game, poultry, eggs, butter, and other articles intended for human consumption. An act relating to cold storage and refrigerating warehouses, the disposition or sale of the food kept or preserved therein, and defining the duties of the state dairy and food commissioner in relation thereto. Approved April 19, 1913, Laws of Iowa, 1913, page 222, Chap. 199, Sec. 1.

Application—examination—dairy and food commissioner—license—fee:—Any person, firm or corporation desiring to operate a cold storage or refrigerating warehouse, shall make application in writing to the state dairy and food commissioner for that purpose, stating the location of its plant or plants. On receipt of the application the state dairy and food commissioner shall cause an examination to be made into the sanitary condition of said plant or plants, and if found to be in a sanitary condition and otherwise properly equipped for the business of cold storage, the state dairy and food commissioner shall cause a license to be issued authorizing the applicant to operate a cold storage or refrigerating warehouse for and during the period of one year. The license shall be issued upon payment by the appli-

cant of a license fee of twenty-five dollars ($25.00) to the state dairy and food commissioner, and all licenses shall expire December 31st following the issue thereof. *Id.* Sec. 2.

Unsanitary conditions—revocation:—In the event that any place or places, or any part thereof, covered by a license, under the provision of this act shall at any time be deemed by the state dairy and food commissioner to be in an unsanitary condition, it shall be his duty to notify licensee of such condition and upon the failure of the licensee to put said specified place or places, or the specified part thereof, in a sanitary condition within a designated time it shall be the duty of the state dairy and food commissioner to prohibit the use under its license such specified place or places, or part thereof, as it deems in an unsanitary condition until such time as it may be put in a sanitary condition. *Id.* Sec. 3.

Accurate records—reports:—It shall be the duty of any person, firm or corporation licensed to operate a cold storage or refrigeration warehouse to keep an accurate record of the receipts and the withdrawals of the articles of food, and the state dairy and food commissioner or his assistants shall have free access to these records at any time. Every such person, firm or corporation shall, furthermore, submit a quarterly report to the state dairy and food commissioner, setting forth in itemized particulars quantity of food products held in cold storage. Such quarterly reports shall be filed on or before the 6th day of January, April, July and October of each year, and the reports, so rendered shall show the conditions existing on the first day of the month in which the report is filed. The state dairy and food commissioner, shall have the authority to require such reports to be made at more frequent intervals than the times herein specified, if in his judgment more frequent reports shall be needed in the interest of a proper enforcement of this act, or for other reasons affecting the public welfare. *Id.* Sec. 4.

Storage of diseased or tainted food prohibited—food not for human consumption plainly marked:—No article of food intended for human consumption shall be placed in cold storage if diseased, tainted or so deteriorated as to injure its keeping qualities, or if not slaughtered, handled and prepared for storage in accordance with the (pure food and sanitary food) laws and such rules and regulations as may be prescribed by the state dairy

and food commissioner for the sanitary preparation of food products for cold storage, under the authority hereinafter conferred. Any article of food if intended for use other than human consumption, before being cold stored shall be marked by the owner in accordance with forms prescribed by the dairy and food commissioner (under authority hereinafter conferred) in such a way as to plainly indicate the fact that such articles are not to be sold for human food. *Id.* Sec. 5.

Inspection:—It shall be the duty of the dairy and food commissioner or his assistants to inspect and supervise all cold storage or refrigerating warehouses in this state, and to make such inspection of the entry of articles of food therein as the state dairy and food commissioner may deem necessary to secure proper enforcement of this act. The state dairy and food commissioner's employes, shall be permitted access to such establishments and all parts thereof at all reasonable times for purposes of inspection and enforcement of the provisions of this act. The said state dairy and food commissioner may also appoint and designate such person or persons as he deems qualified to make the inspections herein required. *Id.* Sec. 6.

Containers plainly marked—date of receipt—when removed:—All articles of food when deposited in cold storage shall be marked plainly on the containers in which they are packed or on, or in connection with, the individual article with the date of receipt, and when removed from cold storage shall be marked with the date of withdrawal, in accordance with such forms as may be prescribed by the state dairy and food commissioner, under the authority hereinafter conferred. *Id.* Sec. 7.

Storage period:—No person, firm or corporation as owner or having control shall keep in cold storage any article of food for a longer period than twelve calendar months, except with the consent of the state dairy and food commissioner as hereinafter provided. The state dairy and food commissioner shall upon application, grant permission to extend the period of storage beyond twelve months for a particular consignment of goods, if the goods in question are found, upon examination to be in proper condition for further storage at the end of twelve months. The length of time for which further storage is allowed shall be specified in the order granting the permission. A report on each case in which such extension of storage may be permitted, in-

cluding information relating to the reason for the action of the state dairy and food commissioner, the kind and the amount of goods for which the storage period was extended, and the length of time for which the continuance was granted, shall be included in the annual report of the state dairy and food commissioner. *Id.* Sec. 8.

Cold storage goods—sign displayed:—It shall be unlawful to sell, or to offer or expose for sale uncooked articles of food which have been held in cold storage without notifying persons purchasing, or intending to purchase the same, that they have been so kept by the display of a sign marked "cold storage goods sold here," and it shall be unlawful to represent or advertise as fresh goods articles of food which have been held in cold storage. *Id.* Sec 9.

Re-storage prohibited:—It shall be unlawful to return to cold storage any article of food that has once been released from such storage and placed on the market for sale to consumers, but nothing in this section shall be construed to prevent the transfer of goods from one cold storage or refrigerating warehouse to another, provided that such transfer is not made for the purpose of evading the provisions of this act. *Id.* Sec. 10.

Rules—regulations—labels:—The state dairy and food commissioner may make rules and regulations to secure a proper enforcement of the provisions of this act, including rules and regulations with respect to the sanitary preparation of articles of food for cold storage, the use of marks, tags, or labels and the display of signs, and the violation of such rules shall be punished on conviction, as provided in section 12 of this act. *Id.* Sec. 11.

Penalty:—Any person, firm or corporation violating any of the provisions of this act shall upon conviction be punished for the first offense by a fine of not less than $25, nor more than $100.00 and for the second offense by a fine of not less than $100 nor more than $500 or by imprisonment for not more than six months, or by both such fine and imprisonment. *Id.* Sec. 12.

DECISIONS AFFECTING WAREHOUSEMEN

A.

Bailment—Bailee may maintain action for loss or damage:—A bailee, although he has not the title, has, in addition to the

possession of the chattel, a special limited or qualified property therein, which gives him a right of action against any one, whether the bailor or a stranger, interfering with his possession or doing damage to the chattel. *Allen* v. *Barrett & Carlton et al.*, 100 Ia. 16.

Bailment and sale:—A warehouseman received wheat with the understanding that when the depositor got ready to sell, the former would give the highest market price therefor or an equal amount of wheat of the same grade and quality. It was shown that it was a custom among warehousemen, when they received wheat to ship it for sale, whenever they saw fit, retaining a sample. It was *held* that this constituted a sale and not a bailment. *Johnston* v. *Browne et al.*, 37 Ia. 200; *Barnes Bros.* v. *McCrea & Co. et al.*, 75 Ia. 267.

Same—Commingling of grain:—Where a receipt, given for grain received in storage, provided in express terms that the grain might be stored with other grain of the same kind and grade, and it was shown that the warehouseman was in the habit of issuing such receipts to his other depositors, and it was also shown to be his known practice to purchase grain on his own account and mingle it with the grain of his depositors and that he was continually making sales from the grain stored, so that in all likelihood the whole mass was changed during a period of a few months, it was *held* that the transaction was one of bailment and not of sale and that the depositors and warehouseman became tenants in common. *Sexton & Abbott* v. *Graham et al.*, 53 Ia. 181; *Nelson* v. *Brown, Doty & Co.*, 44 Ia. 455; *Same* v. *Same*, 53 Ia. 555; *Arthur* v. *Chicago, R. I. & Pac. Ry.*, 61 Ia. 648. But see *Barnes Bros.* v. *McCrea et al.*, 75 Ia. 267.

Same—Contract construed:—Plaintiff delivered to defendants a large quantity of corn and received therefor a receipt in the following words: "Received in store, of C. R. Marks, one load of corn, subject to storage. Number of bushels, 2,920." During the night after the day of delivery, the corn and elevator were burned. An action was brought to recover the value of the corn on the theory that the defendants purchased the same. It was *held* that the contract was one of bailment and, therefore, the defendants were not liable. *Marks* v. *The Cass County Mill & Elevator Co.*, 43 Ia. 146; *Arthur* v. *Chicago, Rock Island & Pacific Ry. Co.*, 61 Ia. 648.

Same—Same—Effect of statement in receipt "bought of," etc., "at owner's risk as to fire":—In an action against a warehouseman in which it was alleged that he was responsible for grain which had been destroyed by fire while stored with him, on the ground that there had been a sale thereof, the evidence showed as follows: That the grain in question had not been mixed in a common bin; that there had been no demand made by the plaintiff for the return of the grain but that the defendant by his agent had, a short time before the fire, made an offer to the plaintiff to purchase the grain. It was *held* that the transaction was not a sale but a bailment, and while it is true that the word "bought" in the receipt unexplained, would import a sale, that when taken in connection with the expression "at owner's risk," etc., and in the light of certain parol evidence which was received to explain the word, that it clearly appears a sale was not contemplated by the parties. *Irons* v. *Kentner*, 51 Ia. 88.

Same—Same—Continues a bailment while stored—Mixing with other grain not conversion:—A warehouseman issued a receipt as follows: "Received of C. C. Cowell for Thompson in store for account and risk C. C. Cowell, one hundred and eighty-three busshels No. 3 wheat, loss by fire, heating and the elements at owner's risk. Wheat of equal test and value, but not the identical wheat, may be returned." The court construed the above contract to mean that so long as the wheat remains in the elevator, loss by fire, heating and the elements is at the risk of the depositor. In other words, so long as the wheat is kept in the elevator, though thrown in a common bin and mingled with other wheat of like quality, it is a mere bailment. But the warehouseman is not under obligation to retain the wheat of the depositor in his warehouse. He may, without breach of contract, and without being guilty of conversion, ship the wheat away on his own account. When he avails himself of this privilege the character of the transaction and the relation of the parties change. There is then a completed sale, and the warehouseman assumes a liability which he can discharge only by payment in wheat of like quality and value, or in money. *Nelson* v. *Brown, Doty & Co.*, 44 Ia. 455.

Same—Statute of limitations in case of:—In cases of bailment the statute of limitations does not commence to run until the bailee holds the property adversely to the claim of his bailor,

that is, until there has been a conversion. *Reizenstein* v. *Marquardt,* 75 Ia. 294.

H.

Unclaimed goods—Sale of—Statutory notice—Questions for the jury:—In an action for conversion against a warehouseman, the defendant alleged that the goods in question had been stored with him and that after the period of six months had elapsed without the payment of charges, he sold the same, as he was authorized to do by law; that pursuant to the statute he had deposited the balance remaining, after deducting his proper charges, with the county treasurer. The plaintiff obtained judgment for the value thereof and the defendant appealed. It is provided by the law that if the goods are of a greater value than one hundred dollars, a different form of notice shall be given than if they are worth one hundred dollars or less. It was left to the jury to say whether the value of the goods exceeded one hundred dollars. It was *held* that this was a proper question for the jury and also, whether or not the notices required by statute were posted in "the most public places in the city." The plaintiff contended that he was entitled to exemplary damages. It was *held* that no such damages should have been allowed. Verdict and judgment for plaintiff. The case was modified and affirmed to the extent that if the plaintiff would remit two hundred dollars from the amount of the judgment and pay costs of appeal that the same would be affirmed. That otherwise the case would be reversed. *Jeffries* v. *Snyder,* 110 Ia. 359.

I.

Commingling of grain—If unauthorized constitutes conversion:—A warehouseman received from the plaintiff a quantity of grain and issued to him the following receipt: "Received in store, of C. Dierkson, twelve loads of wheat, subject to storage. No. of bushels, 462 20-60." Immediately upon the delivery of the grain to the warehouseman it was mingled with other grain therein stored and subsequently sold. The warehouse and contents were destroyed by fire. It was contended on behalf of the plaintiff that the transaction constituted a sale and that the warehouseman was liable for the value of the grain. The defendant contended that as the evidence showed he had in store at the time of the fire more wheat than that claimed by the plaintiff,

he was not liable as the contract was one of bailment. The court *held* that under these circumstances it made no difference whether it were bailment or sale, that the mixture of the plaintiff's wheat with other wheat, without his authority, constituted a conversion and that defendant thereupon became absolutely liable for the value thereof to the plaintiff. *Dierkson* v. *The Cass County Mill & Elevator Co.*, 42 Ia. 38. But see *Arthur* v. *Chicago, R. I. & Pac. Ry. Co.*, 61 Ia. 648.

Same—Without authority of depositor—Does not constitute conversion:—In an action against a warehouseman for the loss of grain destroyed by fire, in which it was shown that the grain had been mingled with other grain, it was *held* that the mere fact of admixture of goods of the same quality does not divest the owner of his property, whether they acted with or without his knowledge. *Arthur* v. *Chicago, R. I. & Pac. Ry. Co.*, 61 Ia. 648.

Same—Separation by warehouseman:—Grain belonging to a warehouseman's several depositors, and some belonging to himself, were mingled with the knowledge of all parties. The warehouseman without the consent of his depositors shipped an amount of the grain from the warehouse in excess of that which he owned. It was *held* that the grain remaining in the warehouse belonged to the several parties who held valid receipts therefor. *Sexton & Abbott* v. *Graham et al.*, 53 Ia. 181.

Same—Substituted ownership—Instructions to jury:—Plaintiff placed in defendant's grain elevator a certain quantity of No. 4 corn which defendant sold and shipped out. Thereafter the elevator and contents were destroyed by fire, when defendant had on hand sufficient corn of grade No. 3. Subsequently plaintiff demanded payment of the corn at the then market price which was refused. In an action for the value of the corn it was held, where grain is stored with the understanding that it may be mixed with other grain of like quality and kind, and the warehouseman may buy and mix his own therewith, and ship and sell therefrom, the owner does not lose title to his proportionate share of the grain, even though the identity of the entire mass has changed. If more than stored remains, each may obtain the quantity deposited; further held to be error not to instruct the jury, in effect, that, the fact that the grain was so mixed or the identical grain delivered had been shipped out and

was replaced by other grain, and that none of the identical grain of plaintiff was in the elevator at the time it was destroyed by fire, confers no right of recovery upon the plaintiff by reason of the facts themselves. *Backus* v. *Lawbaugh*, 86 N. W. 298.

Q.

Warehouse receipts—When invalid—Gambling transactions through board of trade:—An instruction to the jury that certain warehouse receipts were void if, they found from the evidence that the receipts were delivered, not for the purpose of affecting a sale of the commodity which they represented, and that the purchase price therefor was never to be paid, but that the matter was to be settled and adjusted by the payment of the difference between the purchase or selling price, and the market price at the time of the settlement, was *held* correct on the ground that it was a gambling contract. *Lowe Bros.* v. *Young*, 59 Ia. 364, following *Pixley* v. *Boynton*, 79 Ill. 351.

Same—Negotiability—Scale tickets not warehouse receipts—Purchaser not protected:—The plaintiff purchased certain scale tickets from one who had deposited a quantity of wheat with the defendant warehouseman. Such depositor had been notified by the defendant to surrender the tickets and receive in lieu thereof warehouse receipts. He failed to do this, however, and sold the tickets to the plaintiff. Before such sale was made the defendant had sold the wheat and had appropriated the money received therefrom towards the payment of a debt owed by the depositor to the warehouseman. On the above stated facts it was *held* that the plaintiff could not recover, that the scale tickets held by plaintiff were not warehouse receipts and that when he took the same he took no title thereby. The tickets failed to show that the transaction was a contract and there was no statement thereon as to the number of bushels or grade of the wheat nor as to terms or conditions of storage. *Cathcart* v. *Snow & Huber*, 64 Ia. 584.

Same—As collateral—Person to whom issued having no title to the goods—Effect:—A warehouseman issued a receipt to one who had no grain in store at the time but to secure the payment of indebtedness due by the warehouseman to such person. It was *held* that such receipt was invalid as against one who was the *bona fide* holder of the original valid receipt and that under

sections 2171 and 2172 of the Code, the person to whom the warehouse receipt is issued must be the owner of the goods represented thereby. *Sexton & Abbott* v. *Graham et al.*, 53 Ia. 181.

Same—Parol evidence not receivable to contradict or vary the terms thereof:—If warehouse receipts are regarded merely as receipts they may be explained by parol evidence and a contract existing between the parties may be shown by competent testimony. But if they are to be regarded as contracts, they cannot be explained or varied by oral evidence. While such evidence may be admitted to explain the language of the receipts, if ambiguous, the terms, conditions and obligations of the contract cannot be changed in that way. *Marks* v. *The Cass County Mill & Elevator Co.*, 43 Ia. 146; *Lowe Bros. & Co.* v. *Young*, 59 Ia. 364.

Same—Evidence of oral agreement receivable—Custom:—The plaintiff sued the defendant, a warehouseman, for the value of certain grain which he had stored with him, expressly alleging that the contract was not in writing. After the storage of the grain, the warehouse and contents were destroyed by fire. The defendant, in his answer, set forth that the wheat, in accordance with the custom known to the plaintiff, had been mixed with other wheat then in store and that the same number of bushels of other grain of the same grade were stored in the warehouse at the time of its destruction. The defendant showed that this custom was known to plaintiff. At the trial the plaintiff offered his warehouse receipts in evidence to prove that the contract was one of sale and not bailment. The court *held* that as the plaintiff had stated in his declaration that the contract was an oral one, he could not at the trial introduce proof to the effect that the warehouse receipt contained all the terms of the contract. It was further *held* that the evidence of the custom in regard to the mixing of grain was properly received. This case distinguished from *Johnson* v. *Browne*, 37 Ia. 20. *Hughes* v. *Stanley*, 45 Ia. 622; *Irons* v. *Kentner*, 51 Ia. 88.

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Bill of lading—"Good order," effect of:—Where plaintiff took bill of lading from steamboat company in which it acknowledged to have received "in good order" 230 barrels of mess pork, *held*

that the good order, etc., referred only to the external condition and not to the state of the pork itself. *West* v. *Steamboat Berlin*, 3 Ia. 532; *Mitchell* v. *U. S. Ex. Co.*, 46 Ia. 214.

Same—Effect of assignment—Parol testimony:—An assignment of a bill of lading operates as a transfer of the title to the property therein represented. Where, therefore, there was a provision printed across the face of a bill of lading to this effect, "This bill to be surrendered before property is delivered," it was *held* that a party taking such bill of lading as collateral had a right to rely upon this provision and that it was part of the contract. Further, that parol testimony would not be received to vary or contradict the bill of lading in so far as the same was a contract. *Garden Grove Bank* v. *Humeston, etc., Ry. Co.*, 67 Ia. 526; *Hewett* v. *Chicago, B. & Q. Ry. Co.*, 63 Ia. 611; *Wilde* v. *Merchants' Despatch T. Co.*, 47 Ia. 272; *Chapin & Irish* v. *Chicago, M. & St. P. Ry. Co.*, 79 Ia. 582; *Higley & Co.* v. *Burlington, C. R. & N. Ry. Co.*, 99 Ia. 503; *First National Bank* v. *Mt. Pleasant Milling Co.*, 103 Ia. 518. But see *Anchor Mill Co.* v. *Burlington, C. R. & N. Ry. Co.*, 102 Ia. 262.

Same—Delivery pursuant to consignee's directions without return of bill of lading—Subsequent assignment of bill of lading by consignee ineffectual:—The plaintiff purchased a carload of wheat from the consignee thereof which was stored in the cars belonging to the defendant railroad company. The consignee directed the defendant to place the cars at a certain point designated by the plaintiff which it accordingly did. At this time the consignee did not surrender the bill of lading to the plaintiff but he used the same in the purchase of a draft at a bank which became an intervenor in this action. At the trial the court, on motion of the intervenor, directed a verdict for it which was accordingly rendered. On appeal it was *held* that the placing of the cars by the defendant railroad company in the location designated by the consignee constituted a delivery to the plaintiff, and the liability of the defendant as carrier thereupon ceased. That the plaintiff then became the purchaser thereof and the subsequent assignment of the bill of lading to the intervenor could not deprive the plaintiff of his title to the wheat. *Anchor Mills Co.* v. *Burlington, C. R. & N. Ry. Co.*, 102 Ia. 262.

CHAPTER XVI

KANSAS

LAWS PERTAINING TO WAREHOUSEMEN

The Uniform Warehouse Receipts Act is in force in Kansas. It was approved March 10, 1909, and took effect May 29, 1909, see Laws of Kans., 1909, Ch. 262, p. 629, also this volume p. 1.

Grain inspection department:—That a department of record for the inspection and weighing of grain is hereby established to be called "the state grain inspection department." Said department shall have full charge of the inspection and weighing of grain at all railroad terminals, public warehouses, or other points within the state wherever the business transacted will, by the fees provided by law, pay the salary of an assistant inspector and weighmaster, or wherever, upon request of parties interested, to the chief inspector, he may establish inspection and arrange that the officer in charge accept as full compensation for his services an amount equal to the whole revenue obtained at such a place. Gen'l Stats. Kans. 1909, Sec. 3327.

Chief inspector:—It shall be the duty of the governor to appoint a suitable person, to be confirmed by the senate, who shall be known as the chief inspector of grain for the state of Kansas, whose term of service as such shall continue for two years from date of his appointment, unless removed for cause. Said inspector shall not, directly or indirectly, be interested in buying or selling grain, either on his own account or for others, nor shall he be directly or indirectly interested in handling or storing grain as a public warehouseman or on private account during his term of office. *Id.* Sec. 3328.

Duties of chief:—It shall be the duty of the chief inspector to have a general supervision of the inspection and weighing of grain, as required by this act or the laws of the state; to supervise the handling, inspecting, weighing and storage of grain; to establish necessary rules and regulations therefor, and for the management of the public warehouses of the state, as such rules

and regulations may be necessary to enforce the provisions of this act or any law of this state in regard to the same; to keep proper records of all the inspecting and weighing done into and out of warehouses licensed by law to do business in this state, for which purpose he shall have provided books, blanks and other material needed in order to keep perfect and proper records. He shall investigate all complaints of fraud or oppression in the grain trade, and correct the same, so far as may be in his power. *Id.* Sec. 3329.

Oath and bond:—The chief inspector shall, upon entering upon the duties of his office, be required to take an oath that he will faithfully and strictly discharge the duties of his said office of inspector according to law and the rules and regulations prescribing his duties. He shall execute a bond to the people of the state of Kansas in the penal sum of ten thousand dollars, with sureties to be approved in the same manner as bonds of other appointed officers, conditioned that he will pay all damages to any person or persons who may be injured by reason of his neglect, refusal or failure to comply with the law, rules and regulations of this act. *Id.* Sec. 3330.

Supervising inspectors; weighmasters; assistants:—The chief inspector shall be authorized to recommend to the governor a suitable person as supervising inspector in each city, town or place in the state where one or more public warehouses may be doing business under the law, whose duty it shall be to visit daily the elevators and railroad tracks, supervising all inspections, with a view to securing uniform inspection of grain. The chief inspector shall be authorized to recommend to the governor a suitable person as supervising weighmaster in each city, town or place in the state where one or more public warehouses may be doing business under the law, whose duty it shall be to visit daily the elevators and tracks, supervising all weighmasters, inspecting scales, and the loading and unloading of grain, with a view to securing correct weights on all grain weighed by the department. The chief inspector shall be authorized to recommend to the governor suitable and qualified persons as assistant inspectors or assistant weighmasters, to be acting inspectors or weighmasters, in the absence of the chief inspector, who shall not be interested in any public or private grain warehouse, or in the buying or selling of grain, either directly or indirectly, and

also such other employes as may be necessary to properly conduct the business of his office; and the governor shall be authorized to make such appointments, if found by him to be necessary. *Id.* Sec. 3331.

Supervision:—All supervising inspectors, assistant inspectors and assistant weighmasters shall be under the supervision of the chief inspector, to whom they shall report in detail all the services performed by them at the close of each working-day; such officers to take the same oath as the chief inspector, and each to execute a bond in the sum of five thousand dollars, with like conditions and to be approved in like manner as provided for the bond of the chief inspector. Suit may be brought upon the bonds of any of the bonded officers under this act in any court having jurisdiction thereof, in the county where the defendant resides, for the use of any person injured by the act of such officer. *Id.* Sec. 3332.

Standard samples:—It shall be the duty of the chief inspector of grain to furnish any public elevator or warehouse in this state standard samples of the several grades as established by official inspection, when requested to do so by the proprietor, lessee or manager thereof, at the actual cost of such samples. *Id.* Sec. 3333.

Fees:—The fees shall be as follows: For inspecting and sampling each car-load, forty cents; for inspecting out of elevators, thirty-five cents per car; for weighing into warehouses, mills or elevators, fifty cents per car; for weighing out grain that has been previously weighed by the state, where certificates are required, twenty-five cents per car; for weighing out where no certificates are wanted, fifteen cents per car; *Provided*, When a public warehouseman is moving his own grain from one of his warehouses to another a fee of fifteen cents shall be charged for weighing in; for reinspecting where the former inspection and grade are sustained, fifty cents per car; and in all cases where extra samples of car lots of grain inspected are demanded the charge for each sample be twenty-five cents: *Provided*, That whenever track scales are provided by the elevator or warehouseman suitable for weighing all grain in car-load lots all grain delivered to any such elevator or warehouse shall be weighed by the state grain inspection department before the seal of the car in which it is loaded is broken; and thereupon such grain shall

be tested, inspected, and graded; and after the grain has been removed from such car, the car shall by the department be inspected and again weighed by the department. The name and postoffice address of the consignor of such car, when the same are known to the department, shall within ten hours after inspecting such grain be mailed to the consignor, with a statement of the gross weight of such car-load of grain, the total net weight of such grain, the test weight per bushel, and the grade of such grain; and for each car so inspected and weighed on such track scales so provided by the elevator or warehouseman, the fee for weighing into warehouse, mills or elevators shall be twenty-five cents per car. *Id.* Sec. 3334.

Charge a lien:—The charge for inspection and weighing of grain shall be and constitute a lien on the grain so inspected or weighed, and whenever such grain is in transit the said charges shall be treated as advanced charges, shall be collected and paid by the common carrier in whose possession the same is at the time of such inspection or weighing. *Id.* Sec. 3335.

Report of chief:—The chief inspector of grain shall, on or before the tenth day of each month, file with the auditor of state a full and detailed report under oath, of the work done by his department for the preceding month, setting forth the number of cars of grain inspected and weighed, and by whom, the number of samples furnished, the amount of revenue collected by himself and the assistant inspectors and weighmasters; and the chief inspector shall, at the time of filing his said report with the auditor of state, pay into the state treasury all money received as fees for the inspecting, weighing or sampling of grain for the preceding month, which money shall be credited to the general fund. *Id.* Sec. 3336.

First assistant; compensation of inspectors and office force:—In every city or at every railroad terminal in the state where more than one assistant inspector is employed, the chief inspector shall designate one of the assistant inspectors to be known as first assistant inspector, whose duty it shall be to make and compile reports of his respective jurisdiction, and who shall collect the reports of the other assistants and forward the same to the chief inspector. The chief inspector shall keep his office and place of business in the city of Kansas City, Kan., and shall receive

an annual salary of eighteen hundred dollars, payable monthly, and shall be allowed all actual and necessary traveling expenses paid in cash while attending to his official duties; one supervising inspector shall receive a salary of twelve hundred dollars per annum; one supervising weighmaster, a salary of twelve hundred dollars per annum; one chief clerk, a salary of twelve hundred dollars per annum; one collector, a salary of nine hundred dollars per annum; one stenographer, a salary of nine hundred dollars per annum; one office clerk, a salary of seven hundred and twenty dollars per annum; fourteen assistant inspectors, a salary of eighty-five dollars per month each; seventeen weighmasters, a salary of seventy-five dollars per month each; ten helpers, a salary of sixty dollars per month each; and one scale expert, who shall also act as seal clerk, at a salary of one thousand dollars per annum; for contingent fund, twenty-five hundred dollars annually; such office force to hold at the pleasure of the chief inspector, and to be appointed by the governor, on his recommendation. All the salaries provided for in this section shall be paid monthly on verified vouchers approved by the chief inspector. *Id.* Sec. 3337.

Penalty for unlawful act:—Any duly authorized chief inspector, assistant inspector or weighmaster of grain under this act who shall be guilty of neglect of duty, or who shall knowingly or carelessly inspect, grade or weigh any grain improperly, or who shall except (accept) any money or other valuable consideration, directly or indirectly, for any neglect of duty as such grain inspector, assistant inspector or weighmaster, shall be deemed guilty of a misdemeanor, and on conviction shall be fined in the sum of not less than five hundred dollars nor more than one thousand dollars, or shall be imprisoned in the county jail not less than six months nor more than twelve months, or both such fine and imprisonment, in the discretion of the court, and upon conviction of any such offense, such chief inspector, assistant inspector or weighmaster shall forfeit his office. *Id.* Sec. 3338.

Only duly appointed persons to act:—The inspection or weighing of grain in this state, whether into or out of public warehouses or elevators, or in cars, barges, wagons, or sacks, arriving at or shipped from points where state grain inspection is established, must be performed by such persons as may be duly appointed and qualified according to law, and any person

who shall act as inspector or weigher of grain who has not been thus first appointed and qualified shall be guilty of a misdemeanor. *Id.* Sec. 3339.

Exclusive control:—The chief inspector and assistants and officers of the grain inspection department shall have exclusive control of the weighing and inspecting of grain in all places where inspection or weighing is or shall be established under this act; the action and certificate of such officers shall be conclusive to all parties interested, unless appealed from as provided by law. *Id.* Sec. 3340.

Bribery:—Any person, or any representative of a firm, trust, corporation, or association, who shall bribe or offer to bribe any of the officers created under this act shall be deemed guilty of a felony, and upon conviction shall be punished by confinement at hard labor in the penitentiary for a term not exceeding seven years. *Id.* Sec. 3341.

Reinspection:—In case any owner, consignee or shipper of grain, or any warehouse manager, shall be aggrieved by the decision of any supervising or assistant inspector, a reinspection may be called for or an appeal may be taken to a standing committee of three, which the chief inspector shall appoint at every point where state inspection may be established. Said committee shall consist of experienced grain men, and their decision shall be final in the controversy: *Provided*, That the party appealing shall pay said committee a sum not to exceed three dollars per case before said appeal shall be entertained; and in case said appeal is not sustained, the said three dollars so deposited shall be full compensation for such arbitration. In the event of the appeal being sustained, the three dollars so deposited shall be returned to the party appealing, and the arbitration committee shall receive three dollars in full for their services from the state grain inspection department. *Id.* Sec. 3342.

Sale by sample:—Nothing in this act shall be construed so as to prevent any person from selling grain by sample, regardless of grade; but the provisions of this act shall not change the liabilities of the warehouseman on grain now in store, nor the inspection thereof, but said inspection shall be had under the same system under which it was received into store. *Id.* Sec. 3343.

Duty of attorney-general and county attorney:—The attorney-general of the state of Kansas shall be *ex officio* attorney for the chief inspector, and shall give him such counsel and advice as he may from time to time require, and said attorney-general shall institute and prosecute all suits which said chief inspector may deem expedient and proper to institute; and he shall render to said chief inspector all counsel, advice and assistance necessary to carry out the provisions of this act, according to the true meaning and intent thereof. In all criminal prosecutions against a warehouseman for a violation of any of the provisions of this act, it shall be the duty of the county attorney of the county in which such prosecution is brought to prosecute the same to a final issue. *Id.* Sec. 3344.

Public warehouses:—That all elevators or warehouses located in this state in which grain is stored in bulk, and in which the grain of different owners is mixed together, or in which grain is stored in such a manner that the identity of different lots or parcels cannot be accurately preserved, and doing business for a compensation, are hereby declared public warehouses. *Id.* Sec. 3345.

Above section construed:—The title to grain stored as in the abve section provided is in the respective holders of the warehouse receipts, not in the warehouseman. *Bryan* v. *Congdon,* 54. Kan. 109.

License to do business:—The proprietor, lessee or manager of any public warehouse shall be required, before transacting any business, to procure from the chief inspector a license to transact business as a public warehouseman, and shall make written application therefor, setting forth therein the name of such warehouse and the individual name of each person interested as owner or principal in the management of the same; or, if owned or managed by a corporation, the names of the president and secretary; and said license shall give authority to carry on and conduct the business of a public warehouse in accordance with the laws of the state, and shall be revocable by the chief inspector upon complaint in writing, setting forth the particular violation of the law, and upon due notice and hearing and sufficient proof. Gen'l Stats. Kans. 1909, Sec. 3346.

Above section construed:—In a proceeding under the above statute to restrain an alleged improper exercise of power there-

under, the state must be party plaintiff. *Jones* v. *Board of Trade,* 52 Kan. 95.

Bond of licensee:—Any person, company or corporation receiving a license as herein provided shall forthwith file with the secretary of state a bond to the state of Kansas, for the benefit of all persons interested, with sureties approved by the chief inspector, in the penal sum of not less than one thousand dollars nor more than fifty thousand dollars, in the discretion of such chief inspector, conditioned upon the faithful performance of duties as a public warehouse and full compliance with all the laws of this state in relation thereto. A fee of one dollar, for the filing of such bond, shall be paid to the secretary of state: *Provided,* When any person, company or corporation procures a license for more than one warehouse in any one county, but one bond shall be required. Gen'l Stats. Kans. 1909, Sec. 3347.

Penalty, doing business without license:—Any person who shall transact the business of a public warehouseman without first procuring a license and filing said bond as hereinbefore provided, or who shall continue to transact any such business after such license has been revoked (save only that he be permitted to deliver property previously stored in such warehouse), shall on conviction thereof be fined in the sum of not less than one hundred dollars nor more than five hundred dollars for each and every day such business is so carried on; and the chief inspector may refuse to renew any license or grant a new one to any person, company or corporation whose license has been revoked, within one year from the time of such revocation. *Id.* Sec. 3348.

Storage; special bin; charges paid:—It shall be the duty of every public warehouseman, whenever inspection and weighing is or shall be established, to receive for storage any grain, dry and suitable for warehousing, that may be tendered to him in the usual manner in which warehouses are accustomed to receive the same in the ordinary and usual course of business, not making any discrimination in the persons desiring to avail themselves of warehouse facilities; such grain to be in all cases inspected, weighed and graded by a duly authorized inspector and weigher (but to be stored with grain of a similar grade); but if the owner or consignee request, and the warehouseman consent there-

to, his grain of the same grade may be kept in a bin by itself apart from that of other owners, which bin shall thereupon be marked and known as a special bin. If a warehouse receipt be issued for grain so kept separate, it shall state on its face that it is a special bin, and shall state the number of such bin; and all grain delivered from such warehouse shall be inspected and weighed on its delivery by a duly authorized inspector and weigher of grain. Nothing in this section shall be construed to require the receipt of any kind of grain into a warehouse in which there is not sufficient room to accommodate or store it properly, or in cases where such warehouse is necessarily closed. The charge for inspection and weighing upon receipt and delivery shall be paid by the warehouseman and may be added to the charge of the storage. The chief inspector may recover such charges of the warehouseman by an appropriate action in his name. *Id.* Sec. 3349.

Warehouse receipt:—Upon the application of the owner or consignee of grain stored in any public warehouse, the same being accompanied with evidence that all transportation and other charges which may be a lien upon the grain, including the charge for freight, inspection, and weighing, have been paid, the warehouseman shall issue to the person entitled to receive it a warehouse receipt therefor, subject to the order of the owner or consignee of it, which receipt shall bear date corresponding with the receipt of the grain in store, and it shall state upon its face the quantity and respective grade of the grain, and that the grade mentioned on it has been received into store, to be stored with grain of the same grade by inspection, and that the grain represented thereby is deliverable upon the return of the receipt, properly indorsed by the person to whose order it was issued, and the payment of proper charges for storage. *Id.* Sec. 3350.

Numbering; duplicate:—All warehouse receipts for grain issued by the same warehouse shall be consecutively numbered, and no two receipts bearing the same number shall be issued from the same warehouse during any one year, except in the case of a lost or destroyed receipt, in which case the new receipt shall bear the same date and number as the original, and shall be plainly marked on its face "duplicate." If the grain was received from railroad cars, the number of each car shall be stated on the receipt, with the amount it contained; if from barges or other

vessels, the name of such craft; if from team or other means, the manner of its receipt shall be stated on its face. *Id.* Sec. 3351.

Cancellation; issuance and division of receipts:—Upon the delivery of grain from store upon any receipt, such receipt shall be plainly marked across its face the word "cancelled," with the name of the person cancelling the same, and thereafter be void, and shall not again be put in circulation, nor shall grain be delivered twice upon the same receipt. No warehouse receipt shall be issued except upon an actual delivery of grain into store in the warehouse from which it purports to be issued, and which is to be represented by the receipt. Nor shall any receipt be issued for a greater quantity of grain than was contained in the lot or parcel so received, nor shall more than one receipt be issued for the same lot of grain, except in cases where a receipt for a part of a lot is desired, and then the aggregate receipt for a particular lot shall cover that lot and no more. In cases where a part of the grain represented by the receipt is delivered out of the store and the remainder is left, a new receipt may be issued for such remainder, but the new receipt shall bear the same date as the original, and shall state on its face that it is balance of receipt of the original number; and the receipt upon which a part has been delivered shall be cancelled in the same manner as if it had all been delivered. In case it be desirable to divide one receipt into two or more, or in case it be desirable to consolidate two or more receipts into one, and the warehouseman consents thereto, the original receipt or receipts shall be cancelled the same as if the grain had been delivered from the store, and the new receipt or receipts shall express on their face that they are a part of another receipt or consolidation of other receipts, as the case may be, and the number of the original receipt shall also appear on the new ones issued as explanatory of the change; but no consolidation of receipts differing more than ten days in date shall be permitted. All new receipts issued for old ones cancelled as herein provided shall bear the same date as those originally issued, as near as may be. *Id.* Sec. 3352.

Limiting liability:—No warehouseman in this state shall insert in any receipt issued by him any language in anywise limiting or modifying his liabilities or responsibility as imposed by the laws of this state. *Id.* Sec. 3353.

Delivery of property:—On the return of any warehouse receipt properly indorsed, and the tender of all proper charges upon the property represented by it, such property shall be immediately delivered to the holder of such receipt, and shall not be subject to any further charges for storage after demand for such delivery shall have been made; and the property represented by such receipt shall be delivered within forty-eight hours after such demand shall have been made and the cars or vessels for transportation of same shall have been furnished. The warehouseman in default shall be liable to the owner of such receipt for damages occasioned by such default: *Provided*, No warehouseman shall be held to be in default in delivering if the property is delivered in the order demanded and as rapidly as due diligence, care and prudence will justify; but no grain shall be delivered from store or warehouse until the receipt for the same shall have been actually returned. *Id.* Sec. 3354.

Statement:—It shall be the duty of every owner, lessee and manager of every public warehouse in this state to furnish in writing, under oath, at such times as the chief inspector shall require, a statement concerning the condition and management of the business of such public warehouse. *Id.* Sec. 3355.

Warehouseman post statement; furnish statements to inspector:—The manager of every public warehouse, where inspection and weighing are or shall be established, shall, on or before each Tuesday morning, cause to be made out, and shall keep posted up in the business office or (of) such warehouse in a conspicuous place, a statement of the amount of each kind of grain in store at his warehouse at the close of business on the previous Saturday, and shall on each Tuesday morning render a similar statement, under oath, by some one having knowledge of the facts, to the chief inspector. He shall also furnish daily to said chief inspector a statement of the amount of each kind and grade of grain received in store in such warehouse on the previous day for which receipts have been issued, and what warehouse receipts upon which the grain has been delivered on such day have been cancelled, giving the number of each receipt, and the amount, kind and grade of grain received and shipped upon each; also, how much grain, if any, was so delivered and shipped, and the kind, for which warehouse receipts have not been issued, the aggregate of such reported cancellation and delivery of un-

receipted grain corresponding in amount, kind and grade with the amount so reported delivered and shipped. He shall also at the same time report what receipts, if any, have been cancelled and new ones issued in their stead, and shall furnish the chief inspector any further information regarding the receipts issued or cancelled that may be necessary for him to keep a full and correct record of all receipts issued and cancelled and the grain received and delivered. *Id.* Sec. 3356.

Examine property; testing scales:—All persons owning property, or who may be interested in the same, in any public warehouse, and all duly authorized inspectors of such property, shall at all times during the ordinary business hours be at full liberty to examine any and all property stored in any public warehouse in this state, and all proper facilities shall be extended to such person by the warehouseman, his agents and servants, for an examination, and all parts of the public warehouse shall be free for the inspection and examination of any person interested in property stored therein, or of any authorized inspector of such property; and all scales used for weighing of property in public warehouses shall be subject to the examination and test by any duly authorized inspector, weighmaster or sealer of weights and measures at any time when required by any person or persons, agent or agents, whose property has been or is to be weighed on such scales, and the fee for said test shall be paid by the parties making such demand if the scales are found correct, and by the warehouse proprietor if found incorrect. Any warehouseman who may be guilty of continuing to use scales found to be in an imperfect or incorrect condition by such examination and test, until the same shall have been pronounced correct and properly sealed, shall be liable to be proceeded against as hereinafter provided. *Id.* Sec. 3357.

Withhold grain; notice:—In case any owner or consignee of grain shall be dissatisfied with the inspection or grade of any lot of grain, or shall from any cause desire to receive his property without its passing into store, he shall be at liberty to have the same withheld from going into the public warehouse (whether the property may have previously been consigned to such warehouse or not) by giving notice to the person or corporation in whose possession it may be at the time of giving such notice; and such grain may be withheld from going into store, and be de-

livered to him subject only to such proper charges as may be a lien upon it prior to such notice; the grain in railroad cars to be removed therefrom by such owner or consignee within twenty-four hours after such notice has been given to the railroad company having it in possession: *Provided*, Such railroad company place the same in a proper and convenient place for unloading; and any person or corporation refusing to allow such owner or consignee to receive his grain shall be deemed guilty of conversion, and shall be liable to pay such owner or consignee double the value of the property so converted. Notice that such grain is not to be delivered into store may also be given to the proprietor or manager of any public warehouse into which it would otherwise have been delivered, and if after such notice it be taken into store in such public warehouse, the proprietor or manager of such public warehouse shall be liable to the owner of such grain for double its market value. *Id.* Sec. 3358.

Unlawful combination:—It shall be unlawful for any proprietor, lessee or manager of any public warehouse to enter into any contract, agreement, understanding or combination with any railroad company or other corporation, or with any individual or individuals, by which the property of any person is to be delivered to any public warehouse for storage, or for any purpose contrary to the directions of the owner, his agent or consignee. *Id.* Sec. 3359.

Schedule of rates for storage:—The owner, operator or manager of every public warehouse located in this state shall be required, during the first week in July of each year, to publish in one or more of the newspapers (daily, if there is such) published in the city or village in which such warehouse is situated a table or schedule of rates for the storage of grains in his warehouse during the ensuing year, which rates shall not be increased during such year. The maximum charge for storage and handling of grain, including the cost of receiving and delivering, shall be, for the first fifteen days or part thereof, one cent per bushel; and for each fifteen days or part thereof after the first fifteen days, one-half cent per bushel; and for continuous storage between the 15th day of November and 15th of May following, not more than four cents a bushel. *Id.* Sec. 3360.

Change condition of grain; fire; liability of warehouseman:—Any public warehouseman may, on the written request of the

owner of any grain stored in a private bin, upon the surrender of the receipt therefor, be permitted to dry, clean or otherwise change the condition or value of any such lot of grain; but in such case it shall only be delivered as such separate lot, without reference to the grade it may be made by such process of drying or cleaning. Nothing in this section, however, shall prevent any warehouseman from removing grain within his warehouse for its preservation or safe-keeping. Public warehousemen shall be held responsible for any loss or damage to property by fire while in his or their custody; but no warehouseman shall be held liable for damage to grain by heating, if it can be shown that he had exercised proper care in handling and storing the same, and that such heat or damage was the result of causes beyond his control. In order that no injustice may result to the holder of grain in any public warehouse, it shall be the duty of such warehouseman to dispose of, by delivery or shipping in the ordinary and legal manner of so delivering, that grain of any particular grade which was first received by him, or which has been for the longest time in store in his warehouse; and unless the public notice hereinafter provided has been given, that some portion of the grain in his warehouse is out of condition, or is becoming so, such warehouseman shall deliver grain or (of) quality equal to that delivered to him, on all receipts as presented. In case, however, any warehouseman shall discover that any portion of the grain in his warehouse is out of condition, or becoming so, and it is not in his power to preserve the same, he shall immediately give notice to the owner, if known, and if not known, by public notice by advertising in a public newspaper in the city in which such warehouse is situated, and by posting a notice in the most public place (for such purpose) in such city, of its actual condition, as near as he can ascertain. It shall state in such notice the kind and grade of grain, and the bin in which it is stored, and shall also state in such notice the receipts outstanding upon which such grain will be delivered, giving the numbers, amount and date of each, which receipts shall be those of the oldest dates and numbers then in circulation or uncanceled, the grain represented by which has not previously been declared or receipted for as out of condition; or if the grain longest in store has not been receipted for, he shall so state, and shall give the name of the party for whom such grain was stored, the date it was received, and the amount of it; and the enumeration of

receipts and the identification of grain so discredited shall embrace as near as may be as great a quantity of grain as is contained in such bins; and such grain shall be delivered upon return and cancellation of such receipts, and the unreceipted grain upon the request of the owner or person in charge thereof. Nothing herein contained shall be held to relieve the said warehouseman from exercising proper care and vigilance in preserving such grain after such publication of its condition, but such grain shall be kept separate and apart from all direct contact with other grain, and shall not be mixed with other grain while in store in such warehouse. Any warehouseman guilty of any act or neglect the effect of which is to depreciate property stored in the warehouse under his control shall be held responsible therefor to the person damaged thereby, and the bond of such warehouseman shall be held for all damages occasioned thereby. Nothing in this section shall be construed so as to permit any warehouseman to deliver any grain stored in a special bin or by itself as provided in this act to any but the owners of the lot, whether the same be represented by a warehouse receipt or otherwise. In case the grain declared out of condition as herein provided for shall not be removed from store by owner thereof within thirty days from the date of the notice of its being out of condition it shall be lawful for the warehouseman where the grain is stored to sell the same at public auction for account of said owner, by giving ten days' public notice by advertisement in a newspaper (daily, if there is such) published in the city or town where such warehouse is located. *Id.* sec. 3361.

Grading commission:—It shall be the duty of the governor to appoint three suitable persons, to be known as the "Grain Grading Commission," of which not more than two shall be members of the dominant party, who shall, on or before the 1st day of August of each year, establish a grade for all kinds of grain bought or handled in the state, which shall be known as "Kansas grades." The Grain Grading Commission shall elect one of its members clerk, whose duty it shall be to record its work, keep its books and other items of record. The Grain Grading Commission so appointed shall publish a notice in at least two agricultural and one grain-trade or milling journal of the state, for three consecutive insertions, of their intentions to meet for the purpose indicated in this act, so that interested persons or

associations may send representatives to consult and counsel with the Grain Grading Commission appointed to establish grades; and the grades so established shall be published in two agricultural and one grain-trade paper of the state for three consecutive insertions. The compensation of each grain grading commissioner shall be one hundred dollars per annum, and mileage to and from commissioners' place of meeting while occupied with official duties, and that no member of the Board of Grain Inspector (Inspection) Commission shall ride to or from any meeting of said board on a free railroad pass. The term of office of above mentioned commission shall be two years. *Id.* sec. 3362.

Grade and weight on certificate:—Whenever cars of grain requiring inspection are so arranged upon the tracks that they are continuous and contiguous and not mingled on the same track with other cars, it shall be the duty of the officers of the grain inspection department, inspecting or weighing such grain, to show upon the certificate the grade and weight thereof, and also a record of the seal broken and applied, and also to note thereon any condition of leakage found in any car so inspected. *Id.* sec. 3363.

Repeal:—Chapter 45b of the General Statutes of 1901 and chapter 325 and 326 of the Session Laws of 1903, and all acts or parts of acts inconsistent herewith, be and the same are hereby repealed. *Id.* sec: 3364.

Weight furnished:—That any shipper of grain, which grain has been weighed by the grain inspection department of this state, may, on request in writing to the chief inspector and inclosing a stamp for reply, receive, and it shall be the duty of the chief inspector to furnish such shipper, free of charge, the weight of any such grain, by forwarding to him promptly a statement showing such weights: *Provided*, That such written request shall set forth the number and initials of the cars, the weights of which are so desired. *Id.* sec. 3365.

Certificates issued:—All persons, firms or corporations owning, manufacturing or dealing in flour, grains, mill products, seeds or other farm products, or engaged in the business of slaughtering cattle, sheep, or hogs, and dealing in the various products therefrom, or buying or selling butter, eggs, cheese, dressed poultry, or any other merchandise, who own or control the structures wherein any such business is conducted or such commodities

stored, may issue elevator or warehouse certificates or receipts for any such commodities actually on hand and in store, the property of such person, firm or corporation, and may, by the issue of such certificate, sell, sign (assign) incumber or pledge such commodities. Such certificates or receipts shall contain the date of its (their) issue, the name and address of the person, firm or corporation issuing the same, and the name and address of the party to whom issued, the location of the elevator, warehouse or structure wherein the commodity therein described is stored, the quantity of each commodity mentioned therein, the brands or marks of identification thereon, if any, and shall be signed by the person, firm or corporation issuing the same. *Id.* sec. 3427.

Concerning the issuance of warehouse certificates:—Before any such person, firm or corporation, except as hereinafter provided, shall be authorized to issue such elevator or warehouse certificates or receipts, he or it, as the case may be, shall file in the office of register of deeds of the county wherein such elevator, warehouse or other structure is situated a written declaration, which shall contain the name and place of residence or location of such person, firm or corporation, and state that he or it designs keeping or controlling an elevator, warehouse or other structure for the storage and sale of commodities mentioned in the preceding section, and shall contain an accurate description of such elevator, warehouse, or other structure, the location thereof, and the name or names of any person other than the one making such declaration who has any interest in such elevator, warehouse, or structure, or in the land upon which it is situated. And it is further provided that where such person, firm or corporation are residents of and located in this state and operate a line of elevators, warehouses, or other structures in different counties which they desire to bring under the provisions of this act, they shall file in the office of the register of deeds in the county wherein such person, firm or corporation resides, or is located and have their principal place of business, a written declaration which shall contain the name and place of residence or location and principal place of business of such person, firm or corporation, and shall state that he or it designs keeping and controlling a line of elevators, warehouses or other structures for the storage and sale of commodities mentioned in the preceding section and shall contain an accurate description of such elevators, ware-

houses or other structures, the location thereof, and the name or names of any person other than the one making such declaration, who has any interest in such elevators, warehouses or other structures or in the lands upon which they are situated, specifying particularly the same. Such declaration shall be signed and acknowledged by the party making the same before some officer authorized to take acknowledgments of deeds for said county. Act of March 8, 1911, Laws 1911, ch. 186, p. 315.

Indorsement; transfer title:—Each certificate or receipt issued by any such person, firm or corporation under the provisions of this act shall have printed on the back thereof a statement that the party issuing the same has complied with the requirements of section 2 of this act, giving the book, page and name of the county where the record of such declaration may be found. When such certificate or receipt is so issued and delivered, it shall have the effect of transferring to the holder thereof the title to the commodities therein described or enumerated, and shall thereafter be assignable and transferable by delivery, and such delivery shall transfer to any *bona fide* holder in due course the title to the commodities therein described and enumerated against all persons claiming title subsequent to the issuing and delivery of such certificates or receipts. Gen'l. Stats. Kans. 1909, sec. 3429.

Registration of certificates:—All certificates or receipts given under the provisions of this chapter shall be registered by the party issuing them in a book kept for the purpose, showing the date thereof, the number of each, the name of the party to whom issued, the quantities and kinds of commodities enumerated therein, and the brands or other distinguishing marks thereon, if any, which book shall be open to the inspection of any person holding any of the certificates or receipts that may be outstanding and in force, or his agent or attorney, and when any commodity enumerated in any such certificate is delivered to the holder thereof, or it in any other manner becomes inoperative, the fact and date of such delivery or other termination of such liability shall be entered in such register, in connection with the original entry of the issuance thereof. *Id.* sec. 3430.

Not issued, when:—No person, firm or corporation shall issue any elevator or warehouse certificates or receipts for any of the commodities mentioned in this chapter unless such prop-

erty is actually in the elevator or warehouse or structure mentioned therein as the place where such commodity is stored, and it shall remain there until otherwise ordered by the lawful holder of such certificate or receipt, subject only to the lien of the warehouseman thereon and his right to enforce the same. No second certificate or receipt shall be issued for the same property or any part thereof while any other or prior certificate is outstanding and in force, nor shall any such commodities be sold, incumbered, transferred or removed from such elevator, warehouse or other structure wherein the same was stored at the time such certificate or receipt was issued by the warehouseman or any agent or employe thereof without the written consent of the holder thereof indorsed thereon. *Id.* sec. 3431.

Damages:—Any one injured by the violation of any of the provisions of this chapter may recover the actual damages sustained on account thereof. *Id.* sec. 3432.

Acts unlawful; punishment:—Any person who shall willfully alter or destroy any register or certificate or receipt provided for in this chapter, or issue any receipt or certificate without entering or preserving in such book the registered memorandum; or who shall knowingly issue any certificate or receipt therein provided for, when the commodity or commodities therein enumerated are not in fact in the building or buildings it is certified they are in; or shall, with intent to defraud, issue a second or other certificate for any such commodity for which, or for any part of which, a former valid certificate or receipt is outstanding and in force; or shall, while any valid certificate or receipt for any part of the commodities mentioned in this chapter is outstanding and in force, sell, incumber, ship, transfer or remove from the elevator, warehouse or building where the same is stored any such certified property, or knowingly permit the same to be done, without the written consent of the holder of such certificate or receipt, or if any person knowingly receives any such property or helps to remove the same, he shall upon conviction be punished by fine not exceeding ten thousand dollars, or by imprisonment in the state prison not exceeding five years. *Id.* sec. 3433.

Mingling grain:—Nothing in this act shall be construed as prohibiting or preventing warehousemen from mingling in common bins grains or seeds, mill products, or any other merchan-

dise or product, of the same grade, and issuing certificates or receipts therefor, and drawing out and shipping said grain or seeds from said bins, provided that a sufficient quantity of such grains or seeds shall be retained and kept in said bins to represent and satisfy all outstanding receipts or certificates. *Id.* sec. 3434.

Act not affect:—Nothing in this act shall be construed to affect, interfere with or impair any rights of issuing and negotiating warehouse receipts or certificates under any existing law or under any regulation of any chamber of commerce or board of trade within this state. *Id.* sec. 3435.

Contract; warehouse receipts:—Any person who shall, as agent or employe of any person, firm or corporation, enter into an agreement, expressed or implied, by which it is stipulated that grain, seeds or hay shall not be shipped by the producer or local buyer unless accompanied with warehouse receipts or that the same shall in any manner be under the control of any warehouseman or agent as a condition precedent to the marketing of said grain, all such agreements shall be deemed and are hereby declared unlawful and in restraint of trade, and the person entering into such agreement or combination shall be deemed guilty of a misdeameanor, and upon conviction shall be fined in a sum not less than one thousand dollars and not more than five thousand dollars, or by imprisonment in the county jail not less than ninety days and not to exceed one year, or by both such fine and imprisonment, at the discretion of the court. *Id.* sec. 5179.

Common carriers, etc.:—Any forwarding merchant, warehouse keeper, stage, express or railway company, hotel-keeper, carrier, or other bailee not hereinbefore named, having a lien upon goods which may have remained in store or in the possession of such bailee for six months or more, may proceed to sell such goods, or so much thereof as may be necessary to pay the amount of the lien and expenses, according to the provisions of this act: *Provided*, That such sale may be advertised and made by any carrier in any city of the first, second or third class through which its line runs, where in the judgment of such carrier the best price can be obtained for the property to be sold. *Id.* sec. 4810.

Side-track to elevator or mill:—Any person, firm or corporation desirous of erecting and operating or who has erected

a grain elevator of not less than ten thousand bushels' storage capacity, or flouring mill of not less than fifty barrels per twenty-four hours, on lands adjacent to the right-of-way of any railroad company in this state, at or in the immediate vicinity and not to exceed more than one-fourth of a mile of any regular way station of such railroad, shall have the right to demand of such railroad company that it designate the location of a side-track over its right-of-way from the site of said proposed elevator or flouring-mill which it will agree to construct and connect with a switch (or) with any side-track of such railroad at a point within a reasonable distance from such way station and from the site of said proposed elevator or mill, and that it designate the terms and conditions upon which it will construct, maintain and operate such side-track after the erection and completion of said elevator or mill. *Id.* sec. 7239.

Demand:—The demand provided for in the first section of this act shall be in writing, shall designate the proposed location of said grain elevator or flouring-mill, and shall be delivered to the station agent of the railroad company at the station in whose immediate vicinity such grain elevator or flouring-mill is proposed to be erected, or if the railroad company has no agent at such station, then the notice shall be delivered to its station agent located nearest to the place of the proposed erection of such elevator or mill. *Id.* sec. 7240.

Deposit:—The demand hereinbefore provided for shall be accompanied by a deposit of twenty-five dollars, which shall be applied by the railroad company as a payment on the amount of the compensation to which it shall become entitled under the terms of this act, and which shall be forfeited to the company in the event of the failure of the party making such demand to erect a grain elevator or flouring-mill. *Id.* sec. 7241.

Duty of Company:—It shall be the duty of the railroad company upon whom the demand hereinbefore provided for shall be made, within thirty days thereafter, to place in the hands of its agent at the station when such demand is made a written designation of the location of the side-track which it shall agree to construct in accordance with such demand and the terms and conditions upon which it will agree to construct, operate and maintain such side-track; *Provided, however,* The railroad shall not be required to make such written designation in case it shall elect to

grant a permit to the party making such demand to erect an elevator or mill upon its right-of-way as hereinbefore provided for. Such written designation so deposited with the station agent shall be delivered by him to the party or parties who shall have previously made the written demand hereinbefore provided for, on request of such party or parties therefor. *Id.* sec. 7242.

Construction and Repair:—It shall be the duty of the railroad company, immediately after the elevator or mill referred to in the written demand hereinbefore provided for shall have been erected and the manner and terms and conditions on which the switch referred to in such demand shall be located, constructed, maintained and operated, shall have been agreed upon between the railroad company and the party or parties erecting such elevator or mill, or shall have been fixed by the board of railroad commissioners of this state, as provided for by section 6 of this act, to construct such side-track and switch; and such side-track and switch shall at all times be under the control and management of and be kept in repair and be operated by the railroad company constructing or owning the same, and used for the business of such grain elevator or flouring mill for whose use the same may have been constructed, upon such terms and conditions as may be agreed upon by the owner or owners of such elevator, warehouse, mill or manufactory and the railway company building such side-track and switch, or, in case of failure to make such agreement, upon such terms and conditions as are imposed by the board of railroad commissioners, as provided in section 6 of this act. *Id.* sec. 7243.

Differences, adjustment of:—In case the person or persons or corporation making the demand hereinbefore provided for and the railroad company of which the demand is made cannot agree upon the location of such side-track and switch, or upon the terms and conditions upon which the same shall be constructed, maintained and operated, or in case the railroad company shall fail to deposit its written designation with its station agent, or such station agent shall fail to deliver the same to the party or parties making request therefor, as provided by section 4 of this act, either party may apply to the board of railroad commissioners of this state, which is hereby authorized and required, after hearing the parties, to fix the location and the terms and conditions upon which such railroad company shall

be compelled to locate, build, maintain and operate such side-track and switch; and the decision of the board of railroad commissioners in relation thereto shall be accepted and received as an administrative order of said board of railroad commissioners, shall have the same legal effect and be enforced as all other administrative orders of said board made pursuant to paragraph 5998, General Statutes of Kansas of 1901. *Id.* sec. 7244.

Company may designate location:—In case the railroad company shall elect so to do, it may, instead of making the designation provided for in section 4 of this act, designate a suitable location on its right-of-way adjacent to one of its side-tracks at the station in whose vicinity the party or parties making a written demand as hereinbefore provided for shall desire to erect a grain elevator or flouring-mill, at which it will permit the party making such demand to erect such elevator or mill; such election shall be in writing, shall be delivered to the agent of the railroad company, and by him on request therefor shall be by him delivered to the party or parties making the demand, in the same manner as provided by section 4 of this act for the delivery of a written designation of the location of a side-track to be constructed in accordance with such demand. The written election so made and delivered shall constitute a binding contract on the part of the railroad company and the party or parties desiring to erect such elevator or mill to permit the erection of such elevator or mill on its right-of-way at the place therein designated, provided such erection is commenced with sixty days from the date of such written notice of election, and the elevator or mill completed within a reasonable time thereafter. In case the railroad company and the party or parties erecting such elevator or mill are unable to agree upon the compensation to be paid to the railroad company for the privilege of erecting and maintaining the elevator or mill upon the railroad right-of-way, the amount of such compensation shall be fixed and determined on the request of either party by the board of railroad commissioners of this state, and an order of said board of railroad commissioners in this regard shall have the same force and effect and be enforced in the same manner as an order fixing the compensation for the construction, maintenance and operation of a side-track, made under section 6 of this act. *Id.* sec. 7245.

Relating to fire protection in public buildings:—Every building now or hereafter used, in whole or in part, as a public building, public or private institution, business building, warehouse, grain elevator, office building, school house, church, theater, public hall, place of assemblage or place of public resort, lodge room, boarding, lodging, tenement-house, apartment-house or rooming-house, three or more stories in height, shall, within sixty days after the taking effect of this act, be provided with one or more metallic ladders or stair fire-escapes attached to the outside wall thereof, and extending from or suitably near the ground to the uppermost story thereof, with platforms of such shape and size and in such proximity to one or more windows of each story above the first as to render access to such ladders or stairs from each such story easy and safe; in all cases a metallic ladder, not less than eighteen inches between the sides, shall be made to extend from the topmost platform to at least three feet above the fire wall or roof; the number, location, material and construction of such escapes to be subject to the approval of the fire marshal, chief of the fire department, city or town marshal, or such other authority as may have the control of fire regulations in any city or town where such buildings are located; provided, however, that all buildings more than two stories in height used for manufacturing purposes, dormitories, schools, seminaries, hospitals, offices or asylums, shall have at least one such fire-escape for every thirty persons or fraction thereof for which working, sleeping or living accommodations are provided above the second story of said building, if in the judgment of the fire marshal or chief of the fire department and the state superintendent of inspection, such number is necessary; provided, that in the case of all buildings having cement walls, floors, stairways, partitions and fire-proof roofs, the fire chief or fire marshall shall designate and approve the number, kind, location, material and construction of fire escapes if in his judgment the same are required, having due regard for the inflammability of the nature of contents of said building and the number of people employed or residing therein, or occupying the same. In all cases of dispute arising in the enforcement of the provisions of this chapter, the fire marshal or chief of the fire department if in his judgment he deems it necessary to refer such disputed matters arising in the enforcement of this chapter to the state superintendent of inspection, as provided in this act, whose

decision in the matter shall be final. Laws 1911, ch. 197, p. 334, sec. 1.

It shall be the duty of every proprietor, custodian, superintendent or person or persons having the charge and control of such buildings mentioned in this chapter to post notices under the direction of the fire marshal or chief of the fire department in rooms and halls or in public and conspicuous places in such building and designating the place on each and every floor of such building where such metallic ladders or fire-escapes are located and may be found. *Id.* sec. 2.

DECISIONS AFFECTING WAREHOUSEMEN

A.

Bailment—Substituted ownership:—The defendant M received a certain quantity of plaintiff's wheat and issued warehouse receipts as follows (omitting date, etc.) "Load of ———, test 56 lb. Price per bu. .48. Sold to Moses Bros. Grain Co." The words, "Stored at owners' risk of fire," were endorsed across the face subsequently. The elevator and contents were destroyed by fire and plaintiff refused to accept the injured grain and her share of the salvage, but sued for the entire amount of her wheat, alleging value at .60 per bu. *Held:* The receipt recognized that the title to the wheat remained in the bailor; that the contract was one of substituted ownership, wherein as soon as the identical grain which has been deposited is disposed of by the warehouseman, other grain of the same quality and quantity takes its place. Judgment for plaintiff reversed. *Moses* v. *Teetors,* 64 Kan. 149.

Bailment—Universal rule:—It is the universal law of bailments that where the bailment is for the benefit of both parties, the bailee is required to exercise ordinary care and is liable for ordinary negligence. *U. P. Ry. Co.* v. *Rollins,* 5 Kan. 167; *L. L. & G. R. R. Co.* v. *Maris,* 16 Kan. 333.

Same—Duty of warehouseman—Question of what constitutes due care, one for the jury:—When the owner of goods proves that he had entrusted them to a warehouseman, who was unable to return them because they had been burned, it then devolves upon the warehouseman to show that the loss did not occur through any want of care on his part A warehouseman is not

an insurer of goods received for storage, nor is he required to provide a building secure against all danger from outside risk. The law requires that he exercise due care and reasonable precaution to protect and preserve property placed in his custody; that is, such care as an ordinarily prudent person engaged in that business is in the habit of exercising toward property entrusted to him for safe keeping. He should store them in a building reasonably adequate and safe against danger from within, and exercise due care to store them in a place where they will not be exposed to unusual hazards from without. Evidence considered, and held to be a question for the jury, whether the storage of goods in an iron sheeted wooden structure 14 inches from an old livery barn made of pine lumber, containing large quantities of hay, was due care. Judgment for plaintiff affirmed. *Wiley* v. *Locke*, 81 Kan. 143.

B.

Duty of warehouseman on receipt of consignment—Specific directions by a depositor:—If a consignment of property is made to a warehouseman, with specific directions as to how it is to be held or disposed of, under ordinary circumstances the warehouseman must either refuse to accept the consignment, or comply in substance with the instruction of the consignor. *Kansas Elevator Co.* v. *Harris*, 6 Kan. App. 89.

Delivery—Must deliver with a reasonable time after demand:—In an action against a warehouseman for conversion of grain stored with him, it was shown that he failed to deliver the same on demand, although he did not refuse to deliver and, in fact, continually promised to do so. It was urged in his behalf that he had not refused to deliver, in this connection the court *held* that a person cannot, by promising to perform his legal duty and failing to do so, avoid liability. And that the defendant in this case was in no better position than if he had notified the plaintiff that he did not intend to comply with his demand. Upon demand being made of a bailee, he must make delivery within a reasonable time thereafter. *Id.*

Same—Place of:—It is the duty of a grain warehouseman to keep on hand the depositor's wheat, or other wheat of like kind and quality. The warehouseman may refuse a demand to deliver and the owner to receive, at any other place. *McSherry* v. *Blanchfield*, 68 Kan. 310.

Bailee cannot dispute bailor's title:—A bailee cannot set up title in himself to defeat the claim of his bailor. *Thompson* v. *Williams*, 30 Kan. 114.

Conversion—Evidence—Misjoinder of parties and of causes of action:—The several parties plaintiff, brought a joint action against the defendant warehouseman and sheriff who had attached the grain deposited in the warehouse (in an action brought by a bank against the warehouseman), the bank being also made a party defendant. Subsequent to the attachment, the warehouseman issued an instrument to the several plaintiffs in which it was stated that the grain held for them did not belong to the warehouseman although it had been attached in an action against him, it being further stated in such instrument that the warehouseman thereby sold to the several plaintiffs their *pro rata* interest in the grain remaining in the warehouse. It appeared that the grain had been deposited by the plaintiffs at different times and in every instance but one the contract of bailment had been oral. The defendant demurred on the ground that there was a misjoinder of parties and also a misjoinder of causes of action. A judgment was given for the plaintiff pursuant to very conflicting findings by the jury. It was *held* on appeal, that the findings indicate that the wheat was deposited for bailment and not for sale and therefore the plaintiffs had no joint cause of action and that the joint verdict in their favor could not be upheld. *Central State Bank et al.* v. *Walker et al.*, 7 Kan. App. 748.

Board of trade—Right of inspection of grain:—The Kansas City Board of Trade brought an action praying that an injunction be granted against the Argentine Board of Trade and its officers, to restrain them from licensing inspectors of grain. It alleged that there were two warehouses in the vicinity of the defendant which were regularly inspected by deputy inspectors appointed by the complainant. It was alleged in the answer that the defendant was duly incorporated and that its deputy inspectors were appointed in compliance with the laws of the state and the rules of the grain inspectors, which rules the complainant was and had been continually violating. The defendant prayed that the petition of the complainant be denied and further that the complainant be permanently enjoined from collecting or attempting to collect any fees for the inspection of grain in the vicinity of Argentine, and from violating or interfering with

the defendant's exercise and enjoyment of its exclusive rights to inspect grain in its immediate vicinity. The reply filed by the complainant denied the averments of the answer and insisted upon its right to inspect grain in the vicinity of Argentine. The case was submitted to the court on the pleadings, except that the plaintiff withdrew all demand for relief prayed for in its petition. The court found for the plaintiff and that the defendant Board of Trade was not entitled to the relief prayed for in its answer, and the injunction was denied. On appeal the case was affirmed, the court holding that the defendant could not invoke injunction unless its private rights were being invaded by the plaintiff, and no other remedy existed. That the defendant could not assume the duties and responsibilities of the state and the public prosecutor of protecting public interests and securing the punishment of warehousemen who violated the provisions of the statute. If the plaintiff board and its officers were violating the law, the state must interpose by an appropriate proceeding to prevent the unlawful exercise of the power. *Jones* v. *Board of Trade of Kansas City*, 52 Kan. 95.

H.

Storage charges—Tender necessary—Replevin:—Where the defendant bailee stated to a third party that he would not deliver the property bailed even to his bailor upon payment of charges due, and it appeared that such third person was acting without authority conferred upon him by the bailor when he made an offer to pay the charges, it was *held* that this was not a tender such as is required before action of replevin brought. *Brown* v. *Holmes*, 21 Kan. 687.

I.

Commingling of goods—If without authority constitutes conversion:—An instruction to the jury that if they found that the contract of the parties was that the grain of the plaintiff was to be separately binned and the identical grain be redelivered, that a mingling of the grain with other grain, although of like quality, constituted a conversion for which the warehouseman was liable, *held* to be correct. *Kansas Elevator Co.* v. *Harris*, 6 Kan. App. 89.

Replevin — Disputed ownership — Warehouseman's proper course:—Goods taken under replevin proceedings between other

parties were stored with defendant warehouseman by the sheriff. Plaintiff, the true owner, demanded the goods, and instituted proceedings to recover them. It was shown at the trial that defendant had shipped the goods to the plaintiff in the first replevin proceedings, after the institution of the present action. *Held:* That as defendant had the actual physical possession of the property, it was the privilege of plaintiff to bring her action against them; that as they did not disclaim, but filed a general denial and went to trial they cannot complain of being held responsible to plaintiff; that they might have protected themselves by an offer under the statute, (Civ. Code sec. 42) to dispose of the property as the court might direct, but by electing to deliver the property to one of the claimants, they assumed the risk of being held liable to the other. Judgment for plaintiff affirmed. *Peck* v. *Merchant Transfer & Storage Co.*, 85 Kan. 126, 128.

M.

Pledge—Bailee has no right to pledge to secure personal indebtedness:—Where a bailee is in possession of property for the purpose only of bailment, he is not authorized to pledge the same to secure a personal debt due from him. Therefore, the owner has the right to recover the possession of the property so pledged. In order to acquire title to property, it must be purchased from one who is the owner thereof or one authorized to sell the same and the same rule applies in regard to pledge. *Branson* v. *Heckler*, 22 Kan. 610.

Loss by fire—Not liable unless negligence be shown:—A carrier holding goods in capacity of warehouseman *held* not responsible for loss occasioned by fire in the absence of negligence. *L. L. & G. R. R. Co.* v. *Maris*, 16 Kan. 333; *Union Pacific Railroad Co.* v. *Moyer*, 40 Kan. 184; *Kansas City, Ft. Scott & M. R. R. Co.* v. *Patten*, 3 Kan. App. 338.

N.

Negligence—Placing goods in different building—Warehouseman liable for loss:—Plaintiff stored his household goods with defendant warehouseman and evidence tended to show an agreement to store them in a certain brick building. Instead, they were stored in an adjoining iron covered wooden structure, which was destroyed by fire from a stable adjoining. In an action for

the value of the goods destroyed it was held that placing the goods in a different building, which subjected them to a risk not contemplated by the parties, and wherein they were destroyed by fire, makes the defendant liable for the resulting loss. An agreement to keep property in a certain kind of a building is not satisfied by placing and keeping them in a different kind of a warehouse, especially one less secure than that agreed upon. *Wiley* v. *Locke*, 81 Kan. 143, 146.

Damage to goods—Both at fault—Cold storage:—Plaintiff stored with defendant a quantity of eggs which became tainted by the odor of the hard pine wood with which the cold storage room was lined. Neither plaintiff nor defendant were experienced in the matter of cold storage warehousing. Plaintiff frequently visited the warehouse and inspected the room containing the eggs. *Held:* The facts and circumstances considered, that notwithstanding plaintiff's advertisement that its rooms were "free from taint," that the parties being equally negligent, no recovery could be had. A bailor who knows the unfitness of the place of storage of goods provided by his bailee, or has equal opportunity with the bailee of knowing it, who sees and inspects the place of storage, and, who, there being no latent defects in it, passes judgment upon it as a fit place for his purposes, will be deemed equally at fault with his bailee if damage results to the goods. *Parker & Updegraff* v. *Union Ice and Salt Co.*, 59 Kan. 626.

O.

Measure of damages:—Where corn, delivered by bailee to his bailor, is of inferior quality to that deposited and the bailor accepts the same, the measure of damages is the difference between the value of the corn delivered and that deposited. *Kansas Elevator Co.* v. *Harris*, 6 Kan. App. 89.

Q

Warehouse receipts—Evidence—When parol evidence receivable:—A mere receipt may be contradicted or varied by parol but if it is more than that and constitutes a contract of bailment between the parties it cannot be varied by such testimony. *Thompson* v. *Williams*, 30 Kan. 114.

Same—Warehouseman liable for irregular issue:—A warehouse receipt for grain mentioned in Chap. 67, Gen. Stat. of 1897

and Gen. Stat. 1899 secs. 1390-1403, issued by the secretary and manager of an elevator company, was pledged by him as security for a personal loan. The elevator company did not have any grain owned by said manager. *Held:* That such receipts are negotiable like bills of exchange and carry the title to the grain represented; that the receipt was negotiable paper issued by the party authorized to issue such papers, was within the apparent scope of his authority and that defendant was estopped to deny its liability thereon. *Citizens Bank* v. *Capital Elevator Co.*, 9 Kan. App. 144.

Same—Negotiability:—The secretary and manager of an elevator company having full authority to issue warehouse receipts did so to the plaintiff bank as security for a loan. *Held,* the receipt was negotiable paper and defendant was estopped to deny its liability thereon. *Id.*

R.

Bill of lading—What exemptions valid:—While a provision in a bill of lading, or contract between the shipper and carrier, that the latter will not be liable beyond a certain sum expressed therein, may be valid, to limit the liability of the carrier as an insurer, a condition of this character which seeks to cover the negligence of the carrier is void. *K. C. St. J. & C. B. R. R. Co.* v. *Simpson*, 30 Kan. 645; *Railroad* v. *Moyer*, 40 Kan. 184.

Bill of lading—Effect of transfer:—The transfer of a bill of lading passes title to the property represented thereby, but its transfer only passes with it such rights as the party in possession of the goods could transmit by an actual delivery of the goods themselves. *Branson* v. *Heckler*, 22 Kan. 610.

Same—Transfer:—Property may be transferred by assignment of the bill of lading representing same. *Means v. Bank of Randall,* 146 U. S. 620; *Halsey* v. *Warden,* 25 Kan. 128.

Same—Railroad liable if duplicate bill of lading issued:—Where a railroad company issued bills of lading for a part of the consignment and also issued one bill of lading for the entire consignment without cancelling those first issued, and one of such former bills of lading came into the hands of a third person without knowledge, it was *held* that the railroad was estopped to deny that the bill of lading was binding and that it was liable

thereon. *Wichita Savings Bank* v. *Atchison, etc., R. R.*, 20 Kan. 519.

U.

Stock yards—State may prescribe regulations:—The stock yards business as conducted in Wichita is clothed with a public interest, and the state in the exercise of its police power may, within constitutional limitations, subject it to regulations and control. Chap. 487, Laws of 1903 held valid. In this case the reasonableness of the rates prescribed by statute were not raised by the pleadings and hence not passed upon. *Ratcliff* v. *Wichita Union Stock Yards Co.*, 74 Kan. 1.

CHAPTER XVII

KENTUCKY.

LAWS PERTAINING TO WAREHOUSEMEN

Warehouseman—Who deemed:—Any person or corporation who shall receive cotton, tobacco, pork, grain, corn, wheat, rye, oats, hemp, whisky, coal, or any kind of produce, wares, merchandise, commodity, or any other kind or description of personal property or thing whatever in store, or undertake to receive or take care of the same, with or without compensation or reward therefor, shall be deemed and held to be warehousemen. Ky Statutes, 1909, sec. 4768.

Warehouse receipts to be issued by distiller—Penalty:—That no person, firm or corporation shall issue or sign any warehouse receipt or substitute for such receipt on whisky stored in a distillery bonded warehouse in this commonwealth, except the distiller, and any person other than the actual owner and operator of a distillery, who shall issue or sign any warehouse receipt or substitute therefor in violation of section 2 of this act, shall be guilty of a felony, and, upon indictment and conviction, be confined in the penitentiary for a period of time not less than two nor more than ten years in the discretion of the jury. *Id.* sec. 2572, sub. sec. 6 p. 1102.

Warehouse company to guarantee receipts may be organized:—That any number of persons, not less than three, may associate themselves to establish a warehouse company, with power to guarantee receipts issued by said company or by other warehouse companies. *Id.* sec. 4768a, sub. sec. 1.

How organized:—That in the organization of such companies the general provisions of article one, of chapter thirty-two, Kentucky Statutes, shall govern and be complied with. *Id.* sub. sec. 2.

Method of procedure in doing business:—That in the method of guaranteeing receipts such companies shall be gov-

erned by the fourth article of chapter thirty-two, of the Kentucky Statutes, so far as may be applicable, and in the matter of the form of the certificates of guarantee shall be subject to the regulation and control of the insurance commissioner of this state. *Id.* sub. sec. 3.

Receipt to be given for articles:—Every warehouseman receiving anything enumerated in the preceding section shall, on demand of the owner thereof or the person from whom he receives the same, give a receipt therefor, setting forth the quality, quantity, kind and description thereof, if known, and which shall be designated by some mark, and which receipt shall be evidence in any action against said warehouseman. *Id.* sec. 4769.

Receipts negotiable and transferable:—All receipts issued by any warehousemen as provided by this chapter shall be negotiable and transferable by endorsement in blank, or by special endorsement, and with liability as bills of exchange now are, and with like remedy thereon. *Id.* sec. 4770.

Receipts not to issue unless goods in warehouse:—No warehouseman, or other person or persons, shall issue any receipt or other voucher for any goods, wares, merchandise, produce or other thing enumerated in section 4768 of this article, or for any other commodity or thing, to any person or corporation, unless such goods, wares, merchandise, produce, property, commodity or thing shall have been *bona fide* received into possession and store by such warehouseman or other person, and shall be in store and under his or their control, care and keeping at the time of issuing such receipt. *Id.* sec. 4771.

Receipt not to issue as security unless goods are in possession—Liens stated:—No warehouseman or other person shall issue any receipt or voucher upon or for any goods, wares, merchandise, produce, commodity, property, or other thing, of any description or character whatever, to any person or corporation, as security for any money loaned or other indebtedness, unless such goods, wares, merchandise, produce, commodity, property or other thing so receipted for shall be, at the time of issuing such receipt or voucher, the property of the warehouseman and actually in store and under his control, and if there be a lien on the property, then the character and extent of the lien shall be fully set forth and explained in the receipt or voucher. *Id.* sec. 4772.

Duplicate receipts not to be issued:—No warehouseman or other person shall issue any receipt or other voucher for any goods, wares, merchandise, produce or other thing enumerated in section 4768 of this article, whilst any former receipt for any such goods, wares, merchandise, produce, commodity, property or thing as aforesaid, or any part thereof, shall be outstanding and uncancelled. *Id.* sec. 4773.

Property receipted for not to be sold or encumbered without consent:—No warehouseman or other person shall sell or encumber, ship, transfer, or in any manner remove beyond his immediate control, any goods, wares, merchandise, produce, commodity, property or chattel for which a receipt or voucher shall have been given, without the written consent of the person or persons holding such receipt, and the production of the receipt. *Id.* sec. 4774.

Penalty for violation of this article:—Any warehouseman or person who shall willfully and knowingly violate any of the provisions of this article shall be deemed a cheat and swindler, and subject to indictment; and, upon conviction, shall be fined in any sum not exceeding five thousand dollars, or shall be imprisoned in the penitentiary not less than two nor more than five years, or both so fined and imprisoned, in the discretion of the jury; and every person aggrieved by the violation of any of the provisions of this article shall have and maintain an action against the person or corporation violating any of the provisions of this article to recover all damages, immediate, consequent, legal and extraordinary, which he or they may have sustained by reason of such violation as aforesaid, whether such person may have been convicted or not. *Id.* sec. 4775.

Receipts—pledgee may dispose of:—When any receipt or voucher shall have been issued as provided by this article, and used or pledged as collateral security or otherwise for the loan of money, the bank or person to whom the same may be pledged, hypothecated or transferred shall have power and authority to sell the same, and transfer title thereto in such manner and on such terms as may be agreed upon in writing by the parties at the time of making the pledge. *Id.* 4776.

Register to be kept by warehousemen—what it shall show:—Warehousemen shall keep a register, in which shall be re-

corded a list and description of all property which may be stored in their warehouses, and the name and residence of the owner, if known, and the time when the same was received, and the amount of charges thereon. *Id.* sec. 4777.

Sale of property to pay storage—Notice:—Any property in a warehouse upon which the charges have not been paid for twelve months after the same have become due, unless otherwise provided by contract, the warehouseman may sell such property, or enough thereof to pay the charge, at public auction, at the warehouse or at the court-house door of the county in which the warehouse is situated. Before any such sale shall be made, the warehouseman shall cause the sale of the property to be advertised for not less than twenty days before the day of the sale, by printed notices posted at the door of the court-house of the county, and in three or more public places in the county where the sale is to take place, and by having such notice published at least once a week for at least three weeks in a newspaper of general circulation in the county where the warehouse is situated. Such notice shall contain the day and place of sale, a description of the property to be sold, if known; if not, a description of the package in which it is contained, the amount of charges and the name and place of residence of the owner, if known; and the warehouseman, at least ten days before the day of sale, shall mail to the owner a notice of the time and place of sale, with a description of the article to be sold and amount of charges. *Id.* sec. 4778.

Proceeds of sale—How disposed of:—The warehouseman, from the proceeds of the sale, shall pay all the necessary charges and costs of the sale, and shall hold the overplus, if any, subject to the order of the owner, and shall, immediately thereafter, mail to the owner thereof a notice of said sale, amount due him, if his place of residence be known; and at any time within twelve months after such sale, upon the demand of the owner, the warehouseman shall pay the same to him. All such sums which may be in the hands of the warehouseman, not claimed by the owner for twelve months after such sale, shall be paid into the state treasury, which shall be held for a period of two years, subject to the order of the owner or his representatives, upon his or their making satisfactory proof of the rightful ownership of same. *Id.* sec. 4779.

Common law liability can not be restricted:—It shall be unlawful for the owners, operators or controllers of any warehouse of the kind herein contemplated to make any contract restricting or limiting their common law liability for goods stored. *Id.* sec. 4780.

Oil Warehouses—Establishment of:—That cotton seed oil may be received and stored by the owner of any oil warehouse, and warehouse receipts may be issued therefor, as herein provided; the owners of such warehouse shall, before transacting business, obtain a license and give bond as provided for by sections 4782 and 4783 of the Kentucky Statutes in the case of grain warehouses, such bond to be in the penal sum of twenty-five thousand ($25,000) dollars. *Id.* sec. 4780a sub. sec. 1.

Duty of warehouseman:—The warehouseman shall provide tanks for the storage of such oil, and may store in the same tanks various lots of oil of the same grade and quality, and issue warehouse receipts therefor, but oils of different grade or quality shall not be mixed together, nor shall the warehouseman attempt to deliver oil of one grade or quality for another. *Id.* sub. sec. 2.

What receipts must show:—On application of the owner or consignee of oil stored in any licensed warehouse hereby authorized, the warehouseman shall issue to the persons entitled thereto a warehouse receipt therefore, subject to the order of the owner or consignee, which receipt shall bear date corresponding with the receipt of the oil into store, and shall state upon its face the quantity and inspected grade of the oil, and that the oil mentioned has been received in store, to be received and stored with other oil of like kind and grade and that it is deliverable upon the return of the receipt, properly endorsed by the person or corporation to whose order it was issued and the payment of the proper charge for storage. *Id.* sub. sec. 3.

All receipts numbered, and no two same number:—All warehouse receipts for oil issued from the same warehouse shall be consecutively numbered and no two receipts shall bear the same number, except in the case of a lost or destroyed receipt, in which case the new receipt shall bear the same date and number as the original receipt, and shall be plainly marked on its face "duplicate." *Id.* sub. sec. 4.

When warehouseman to cancel receipts:—On delivery of oil from store against receipts, such receipts shall be plainly marked by the warehouseman, across its face, with the word "Cancelled," and the same shall thereafter be void and shall not again be put in circulation. *Id.* sub sec. 5.

Receipts not to issue until oil delivered—Division or consolidation of receipts:—No warehouse receipt shall issue, except on the actual delivery of oil into store in the warehouse from which it purports to be issued, and which it is to be represented by the receipt, not for a greater quantity of oil than was received. Where a part of the oil represented by the receipt is delivered out of store, a new receipt may be issued for the remainder, but it shall bear the same date as the original and show on its face that it is the balance of the original number, and the receipt on which part has been delivered shall be cancelled. When it is desired to divide one receipt or to consolidate two or more into one, this may be done with the warehouseman's consent, and the original receipts may be cancelled; but the new ones must show on their face that they have proceeded from such division, or consolidation, together with the numbers and dates of the old receipts. *Id.* sub. sec. 6.

Oil must be in store to represent receipts issued:—Every warehouseman doing business under this act shall at all times have in store in his tanks an amount of merchantable oil equal in quality, quantity and grade to the amounts called for by its outstanding receipts, and every warehouseman wilfully failing so to do shall be liable on his bond to any person or persons, corporation or corporations, for all damage sustained by such failure. *Id.* sub. sec. 7.

Record of oil and receipts:—The warehouseman shall, in a book provided for that purpose, show the amount, grade and quality of oil on hand, and the amount of receipts outstanding, which book shall be open at all times to the inspection of any holder of such receipt. *Id.* sub. sec. 8.

Penalties:—Any warehouseman wilfully failing or refusing to comply with section seven of this act shall be deemed guilty of a felony, and shall be confined in the penitentiary for not less than one nor more than five years. *Id.* sub. sec. 9.

Statutes applicable:—The provisions of section 4768, to and including section 4780 of chapter 133 of the Kentucky Stat-

utes, are hereby made applicable to oil warehouses, and oil warehousemen shall perform the duties and be subject, as other warehousemen, to the penalties in said section provided. *Id.* sub. sec. 10.

Public granaries, elevators, warehouses—Defined:—Public grain elevators, warehouses and granaries in this Commonwealth shall embrace those in which grain is stored, inspected, classified and sold. *Id.* sec. 4781.

License procured from county clerk—Revocation of:—The proprietor, lessee or manager of any public grain warehouse shall, before transacting any business therein, procure from the clerk of the county court a license permitting him to transact business of such a warehouse, which license shall be issued by the clerk of said court, on a written application, setting forth the location and name of such warehouse, and the name of each person interested as owner or principal in the management thereof; if the warehouse be owned or kept by a corporation, its name and those of its president, secretary and treasurer. This license shall be granted upon the payment of a fee of one dollar to the clerk, and shall be recorded in the bond and power of attorney book in the clerk's office. It shall be revokable by the circuit court of the county, upon a summary proceeding before that court, upon written complaint of any person setting forth the particular violation of law, and on satisfactory proof, to be taken as may be directed by the court. *Id.* sec. 4782.

Bond to be executed—Terms of—Action on:—The person receiving a license shall file a bond in the county clerk's office, with good sureties, to be approved by the court, conditioned for the faithful performance of his duty as a public grain warehouseman, and his compliance with the laws relating thereto. Suit may be brought on such bond by any person injured by the violation of this law, or by the non-performance of any of the warehouseman's duties. *Id.* sec. 4783.

License from city not dispensed with—Penalty for doing business without:—The license herein provided for shall not dispense with the obtaining from year to year such license as any city may lawfully require under its charter for the purpose of taxation. Any one transacting the business of a warehouseman without first procuring a license, as herein provided, or continuing such business after such license is revoked (except by de-

livering property previously stored), shall be fined, on conviction, in the sum of one hundred dollars for each day such business is carried on, and the court revoking a license may adjudge that no new one shall be granted to the person holding it, or to any of them, within one year from the time the same may be revoked. *Id.* sec. 4784.

Grain—Duty of warehousemen concerning:—It shall be the duty of every such warehouseman to receive for storage any grain that may be tendered to him, without making any discrimination between persons, such grain in all cases to be inspected and graded by a duly authorized inspector, and to be stored with grain of a similar grade received at the same time, as near as may be. In no case shall grain of different grades be mixed together while in store; but if the owner or consignee so requests, his grain may be kept by itself in a separate bin. If a warehouse receipt be issued for grain so kept separate, it shall state on its face that it is in a separate bin. Nothing in this section shall be so construed as to require the receipt of grain into any warehouse in which there is not sufficient room to accommodate or store it properly, or in cases where the warehouse is necessarily closed. *Id.* sec. 4785.

Receipts issued for grain—Form of:—On application of the owner or consignee of grain stored in such a warehouse, and the charges of inspection being paid, the warehouseman shall issue to the person entitled thereto a warehouse receipt therefor, subject to the order of the owner or consignee, which receipt shall bear date corresponding with the receipt of grain into store, and shall state upon its face the quantity and inspected grade of the grain, and that the grain mentioned has been received in store, to be received with other grain of like grade and of about the same time of receipt, and that it is deliverable upon the return of the receipt, properly endorsed by the person to whose order it was issued, and the payment of the proper charges for storage. All warehouse receipts for grain issued from the same warehouse shall be consecutively numbered, and no two receipts shall bear the same number except in case of a lost or destroyed receipt, in which case the new receipt shall bear the same date and number as the original, and shall be plainly marked on its face "Duplicate." If the receipt was received from railroad cars, the number of each car shall be stated upon the receipt, with the

amount it contained; if from steamboat or other vessel, the name of the craft; if by teams or by other means, the manner of its receipt shall be stated. On delivery of grain from store against receipt, such receipt shall be plainly marked across its face with the word "Cancelled" and the name of the person cancelling the same, and shall thereafter be void, and not again be put in circulation. *Id.* sec. 4786.

Receipt to issue only for grain actually delivered—Division or consolidation of receipts:—No warehouse receipt shall issue, except on the actual delivery of grain into store in the warehouse from which it purports to be issued, and which is to be represented by the receipt, nor for a greater quantity of grain than was received. Where part of the grain represented by the receipt is delivered out of store, a new receipt may be issued for the remainder, but it shall bear the same date as the original and show on its face that it is balance of the original number, and the receipt on which part has been delivered shall be cancelled. When it is desired to divide one receipt or to consolidate two or more into one, this may be done with the warehouseman's consent, and the original receipts may be cancelled; but the new ones must show on their face that they have proceeded from such division or consolidation, together with the numbers and dates of the old receipts. *Id.* sec. 4787.

Receipt not to affect legal liability:—No grain warehouseman can, by any proviso in the receipt or in any otherwise, restrict the liability put upon him by law. *Id.* sec. 4788.

Grain to be delivered upon presentation of receipt.—Penalty:—Upon presentation of the receipt, properly endorsed, and tender of charges, the quality of grain therein named shall be at once delivered to the owner, and no storage can be charged after demand made; and for any delay in delivery beyond the time required with due diligence, care and prudence, the warehouseman shall be liable for damages which, at the option of the party injured, may be assessed at one cent per bushel for every day of neglect or refusal to deliver. *Id.* sec. 4789.

Statements—Posting and delivery of to registrar:—Each grain warehouseman shall, on every Tuesday, post in his office a statement of the amount of each kind and grade of grain on store in his warehouse at the close of business hours of the pre-

ceding Saturday, and shall furnish daily to a registrar of warehouses, hereinafter provided for, if there be one appointed for the city or county in which the warehouse is situated, a statement of all the receipts and deliveries and of the issual and cancellation of receipts of the day, together with any other information that may be needed for keeping a true and faithful record of the state of the warehouse. If there be no registrar, he shall post, as provided in this section, a statement of the receipts and deliveries, and of the issue and cancellation of receipts of the week ending with such Saturday. *Id.* sec. 4790.

Inspector, weigher and registrar—Appointment—Removal—Qualifications—Compensation:—The Commissioner of Agriculture shall appoint an inspector, weigher and registrar for the warehouses in the city, and fix their duties, the amount and kind of bond to be given by them, and their fees, which shall be paid by the seller, and the board of trade shall, at least once in each year, establish standard grades of the various kinds of grain by which the inspectors shall be governed in their inspection; but any warehouseman, seller or buyer, or other person in interest, may, on summary complaint to the circuit court of the county, obtain a reduction of the fees, if, in the opinion of that court, they are exorbitant. And the same court, shall, upon complaint of malfeasance or neglect, remove any inspector, weigher or registrar, and declare him incompetent for reappointment, the proceedings being as near as may be similar to those for vacating an office. No member of the board of trade or person interested in any warehouse, shall be appointed inspector, weigher or registrar, nor shall any inspector, weigher or registrar have stored or offer for sale, in any warehouse under his supervision, any commodity owned by him or in which he is directly or indirectly interested, nor shall he be a purchaser at any sale made by the warehouse of any commodity inspected, weighed or registered by him. No person shall be appointed inspector, weigher or registrar unless he be a citizen of the state of Kentucky, has attained the age of twenty-five years, and has been a resident of the city for which he has been chosen at least one year next preceding his appointment. *Id.* sec. 4791.

Rates and charges to be posted semi-annually:—Every such warehouseman shall, before receiving any grain on store and thereafter within the first week of every January and July, pub-

lish his rates of storage and charges for receipts and deliveries, by posting them in his office and in the rooms of the board of trade, if there be any in a city situated in the same county as the warehouse, and shall not increase them during the intervening time, nor shall any subsequent change of rates apply to grain previously received in the warehouse. *Id.* sec. 4792.

Inspector and weigher—When appointed by fiscal court—Qualifications—Bond—Fees—Term of office:—In all cities and counties where there are grain warehouses, and where there is no board of trade, it shall be the duty of the fiscal court of the county to appoint an inspector and weigher for said warehouses, who shall file a bond in the county clerk's office, with good sureties, to be approved by the court, conditioned for the faithful performance of his duty as such inspector and weigher, on which suit may be brought by any person injured by the violation of such duty. Said inspector and weigher shall have the inspection and weighing of all commodities stored in said warehouses. The fiscal court of the county shall fix the fees of said inspector and weigher, which shall be paid by the seller. No person interested in any warehouse shall be appointed an inspector, weigher or registrar; nor shall any inspector, weigher or registrar have stored or offered for sale in any warehouse under his supervision any commodity owned by him or in which he is directly or indirectly interested. Nor shall he be a purchaser at any sale made by the warehouse of any commodity inspected, weighed or registered by him. No person shall be appointed inspector and weigher unless he be a citizen of the State of Kentucky, has attained the age of twenty-five years, and has been a resident of the county for which he has been chosen at least one year next preceding his appointment. Said inspector and weigher shall be appointed for the term of two years, and until his successor is appointed and qualified. *Id.* Sec. 4793.

Fire or injury to grain—When warehouseman not liable—Duty of—Notice to owner:—No public warehouseman shall be held responsible for any loss or damage to property by fire while in his custody, provided reasonable care be exercised to protect and preserve the same, nor for loss or damage by heating, if he has exercised due care in handling and storing the grain, and the heating resulted from causes beyond his control. To prevent injustice from heating, it shall be the duty of the

warehouseman, as nearly as possible, to deliver out grain of each grade in the order of time in which it was received. In case, however, that a warehouseman shall discover that any part of the grain in his warehouse is out of condition, or becoming so, and it is not in his power to preserve the same (provided it is not stored in a separate bin as above provided for), he shall, by notice published in a daily newspaper of Louisville, or in the county where the warehouse is situated, if there be one, and posted at the board of trade rooms, if there is a board of trade in the city where the warehouse is located, or by written notice to the person to whom the warehouse receipt was issued, if known, of its actual condition, as near as he can ascertain it, state the kind and grade of grain, and the bin in which it is stored; and shall also state in such notice the receipts outstanding upon which such grain will be delivered, giving the numbers, amounts and dates of each, which receipts shall be those of the oldest dates then in circulation or uncancelled, the grain represented by which has not previously been declared or receipted for as out of condition; or if the grain longest in store has not been receipted for, he shall so state, and shall give the name of the party for whom such grain was stored, the date it was received, and the amount of it; and the enumeration of receipts and identification of grain so discredited shall embrace, as near as may be, as great a quantity of grain as is contained in such bins; and such grain shall be delivered upon the return and cancellation of the receipts, and the unreceipted grain upon the request of the owner or person in charge thereof. Nothing herein contained shall be held to relieve the said warehouseman from exercising proper care and vigilance in preserving such grain after publication of its condition; but such grain shall be kept separate and apart from all direct contact with other grain, and shall not be mixed with other grain while in store in such warehouse. Any warehouseman guilty of any act of neglect, the effect of which is to depreciate property stored in the warehouse under his control, shall be held responsible as at common law, or upon the bond of such warehouseman, and, in addition thereto, the license of such warehouseman shall be revoked. In case the grain declared out of condition, as herein provided for, shall not be removed from store by the owner thereof within two months from the date of the notice of its being out of condition, it shall be lawful for the warehouseman where the grain

is stored to sell the same at public auction, for account of said owner, by giving ten days' public notice in a daily newspaper of Louisville, or of the county where the warehouse is situated, if there be one. *Id.* Sec. 4794.

Grain of different qualities not to be mixed:—It shall not be lawful for any public warehouseman to mix any grain of different grades together, or to select different qualities of the same grade for the purpose of storing or delivering the same, nor shall he attempt to deliver grain of one grade for another, or in any way tamper with grain while in his possession or custody with a view of securing any profit to himself or any other person; and in no case, even of grain stored in a separate bin, shall he be permitted to mix grain of different grades together while in store. He may, however, on request of the owner of any grain stored in a private bin, be permitted to dry, clean or otherwise improve the condition or value of any such lot of grain; but in such case it shall only be delivered as such separate lot, or as the grade it was originally when received by him, without reference to the grade it may be as improved by such process of drying or cleaning. Nothing in this section, however, shall prevent any warehouseman from moving grain while within his warehouse for preservation or safe-keeping. *Id.* Sec. 4795.

Inspector or weigher—Penalty—For neglect:—Any duly authorized inspector and weigher of grain, who shall be guilty of neglect of duty, or who shall knowingly or carelessly inspect or grade any grain improperly, or who shall accept any money or other consideration, directly or indirectly, for any neglect of duty or the improper performance of any duty as such inspector of grain, and any person who shall improperly influence any inspector of grain in the performance of his duties as such inspector, shall be deemed guilty of a misdemeanor and, on conviction, shall be fined in a sum not less than one hundred dollars nor more than one thousand dollars, in the discretion of the jury, or shall be imprisoned in the county jail not less than three nor more than twelve months, or both, in the discretion of the jury. *Id.* Sec. 4796.

Law—Copy of this to be posted:—All proprietors or managers of public grain warehouses shall keep posted up at all times, in a conspicuous place in their business offices, and in

each of their warehouses, a printed copy of this act. *Id.* Sec. 4797.

Combination to control or interfere with bidding unlawful:—That it shall be unlawful for any tobacco warehousemen, corporation or individuals to combine together, by any rule, by-law or otherwise, for the purpose of controlling, or in any way interfering with, the free and unrestricted right to bid on or to purchase leaf tobacco offered for sale at public auction at any warehouse or place of sale where tobacco is sold by such warehousemen for others in this Commonwealth. *Id.* Sec. 4810.

Grading—Giving notice thereof:—That any corporation, company, partnership, or individual engaged in the business of warehousemen for the purpose of receiving, grading, handling, prizing and storing tobacco, shall, upon the receipt of such tobacco grade it into distinct and proper grades, and weigh same; and shall give warehouse receipt therefor to the owner or consignor thereof, setting forth each grade and the number of pounds thereof; and after so doing said corporation, company, partnership or individual shall have the right to commingle all tobacco, so received into like grades and types. Act March 25, 1908, Sess. Laws, 1908, p. 60, Sec. 1.

Warehouse receipts issued:—All warehouse receipts so issued shall be consecutively numbered, shall have the name of the owner or consignor written therein, shall bear date upon the same date such tobacco is so received by such warehousemen, shall have written therein the character and amount of lien, or mortgage, if any, upon tobacco so received, and the name of the person holding said lien or mortgage; and such receipt shall be signed by the proper officer of the corporation, company, partnership or individual. If such receipt be lost or destroyed, it shall be the duty of the warehousemen to issue the owner another receipt, and mark across or upon the face thereof the word "duplicate." *Id.* Sec. 2.

All warehouse receipts so issued by any corporation, company, partnership or individual, engaged in the business as above set forth, shall be negotiable and transferable by endorsement in blank or by special endorsement, and with like liability as bills of exchange now are, and with like remedy thereon. And it is provided that any of such warehousemen may in such receipts agree and bind themselves to pay the person rightfully

holding the same and entitled thereto the value of the property described therein, in the event of loss or damage from any cause while in the possession of such warehousemen. Act March 25, 1908. Sess. Laws, 1908, as amended by Act approved March 4, 1910, Sess. Laws 1910, p. 1, Sec. 3.

It shall be the duty of such warehousemen to have some person or persons competent to grade such tobacco into proper grades and to weigh same in proper manner. Act March 25, 1908, Sess. Laws, 1908, p. 61, Sec. 4.

Nothing herein shall be deemed to be in conflict with the laws of this Commonwealth, governing grain and tobacco warehousemen, where tobacco is received and stored for sale. *Id.* Sec. 5.

This act, on account of the emergency that exists, for the proper relief of the handling of the 1907 crop, shall be in effect from and after the date of its passage. *Id.* Sec. 6.

DECISIONS AFFECTING WAREHOUSEMEN

A.

Bailment and sale—Mixing of grain:—Where a party deposits his grain for storage merely and it is mixed with other grain he does not part with his title—there is no sale but merely a bailment. *Ferguson, Jr., Assignee,* v. *Northern Bank of Kentucky,* 14 Bush. 555; *Moss* v. *Meshew,* 8 Bush. 187; *Newcomb, Buchanan & Co.* v. *Caball,* 10 Bush. 460; *May* v. *Hoaglan,* 9 Bush. 171; *Crawford* v. *Smith,* 7 Dana 59; *Jenings* v. *Flanagan,* 5 Dana 217.

B.

Warehouseman's authority and liability commences with the reception of goods:—A warehouseman has no interest in, or power over goods, nor liability for the same, until they are actually received by him. *Jefferson R. R. Co.* v. *White,* 6 Bush 251.

Bailment—Not insurer—Warehouseman's right to have property removed—Charges:—A grain owner stored his wheat with a warehouseman in a separate bin at a specified rate per month. The warehouseman discovered weevil in other wheat and requested the owner to remove his wheat. Later weevil was discovered in this wheat and the owner was again notified, but refused to remove his wheat. Afterward the warehouseman

ran out the wheat. *Held:* that a warehouseman is not an insurer. That he is only bound to use ordinary care to protect property and is not responsible for injury which cannot be guarded against by ordinary care. That when the warehouse became infected with weevil the warehouseman had the right to close it, and, upon reasonable notice, to require all wheat to be removed, and if not removed by the owner, to add to the storage charges the reasonable cost of removing. *Carley* v. *Offutt & Blackburn*, 124 S. W. 280.

Ordinary care—Liability for goods stolen:—Nine hundred barrels of salt were stored and two hundred and forty of them stolen at ten different times during a period extending over a month. *Held* the warehouseman was liable, not having used ordinary diligence to preserve the salt. *Chenowith & Co.* v. *Dickinson & Shrewsberry*, 8 B. M. 156.

Damages against warehouseman for violation of warehouse law—Res judicata:—The plaintiff bank brought an action against the defendant on his note which he had issued to one M., a warehouseman, M. in turn having indorsed the same to the plaintiff. To this suit the defendant set up a number of defenses by way of set-off and counterclaim, and on account of usury. The defenses were substantially allowed by the lower court with the exception of counterclaim for a large sum alleged to be due him for damages growing out of the violation by the warehouseman of the statutes regulating his duties. This action was brought on the equity side of the court, there being a mortgage on certain property to secure the payment of the note. Later the defendant brought an action against the warehouseman for the identical cause of action alleged in his counterclaim. The trial resulted in a judgment for a small amount for him but the court, by the instructions, limited the recovery to those violations of the statute occurring prior to a certain date (why this was done does not appear on record). After this common-law suit had terminated, the defendant in the original action filed an amended answer in counterclaim in the equity suit in which he claimed damages for violations subsequent to the aforesaid date. It was *held*, on appeal, that this was error, that the proceedings in the common-law action put in issue the alleged violations of the warehousemen's act and although there had been another warehousemen's law enacted, the court ought to

have controlled the action of the jury by instructions under these statutes. Had the court refused to do so, M. would have had his right of appeal. The very facts attempted to be put in issue by the amended answer and counterclaim in the equity suit had already been put in issue in the common-law action, and were either tried out before the jury or should have been. *Murrell* v. *Citizen's Savings Bank*, 19 K. L. R. 693.

Warehouseman's bond—That business constituted a monopoly no defense for sureties—Effect of suspension from the exchange: —A consignor of tobacco brought an action against G., a warehouse company, and several individuals, who had become sureties on the bond of the company that it would account for the proceeds of all sales made of tobacco consigned to it. The defendant answered and alleged that G. had been suspended from membership in the exchange and therefore that the bond given by it and the other defendants to the exchange was no longer in effect. By an amended answer the defendants alleged that the purposes for which the exchange was formed were illegal, in that they attempted to create a monopoly or trust and thus stifle competition; and, consequently, the bond given to it was void and of no effect. The answer also contained a denial of the shipment and sale and of the indebtedness. Demurrers to all of the matters contained in the answer except that last stated, were sustained and, by agreement of the parties, the case was submitted to the court, a jury trial being waived. Judgment was given for the plaintiff for the full amount of his claim. On appeal it was *held* that the plea of the appellants in regard to the illegal nature of the business of the exchange and in regard to the suspension of the company as a member of the exchange was not sufficient in law to relieve them of their liability as principal and sureties on the bond. That before the order of suspension could relieve the sureties from liability it would have to be shown that it was either brought to the attention of the plaintiff or that public notice thereof had been given. *Globe Tobacco Warehouse Co.* v. *Leach*, 19 K. L. R. 1287.

Public warehousemen—Duty to the public—Cannot lessen their liability by changing name:—Public warehousemen are invested with a monopoly of certain public privileges, made so as a matter of necessity, and this authorizes the exercise of legisla-

tive power over them for the public welfare. Warehousemen have assumed a *quasi*-public character under the protection of the law, and will not be allowed to exercise all the privileges that have heretofore belonged to *warehousemen*, and evade all the duties and responsibilities of the position by the passage of a resolution *declaring* that they are operating their business, not in the capacity of *warehousemen, but as commission merchants.* Such warehousemen are obliged, therefore, to receive from the public, tobacco in store for which they can make a reasonable charge; but while this right exists it does not follow that a court of equity will undertake to grant relief by injunction where one party is as much at fault as the other. *Nash* v. *Page*, 80 Ky. 539; *N. D. ex rel. Stoeser* v. *Brass*, 2 N. D. 482, affirmed 153 U. S. 391; *Munn* v. *Illinois*, 69 Ill. 80, affirmed 94 U. S. 113. See also *People* v. *Budd*, 117 N. Y. 1, affirmed 143 U. S. 517. See *State* v. *Associated Press*, 159 Mo. 410.

Same—Sale of goods not belonging to bailor—Effect of recording chattel mortgage:—Where a public warehouseman, acting in the usual course of business, received tobacco for sale and sold the same and turned the proceeds over to his customer, in the absence of any notice that he was not the owner thereof, it was *held* that he was not liable to the real owner although there was a chattel mortgage covering the tobacco in question duly recorded. Being a public warehouseman he assumes the obligations of serving the entire public, having no right to select his customers, provided they conform to reasonable rules and regulations. *Abernathy & Long* v. *Wheeler M. & Co.*, 92 Ky. 320; *Nash* v. *Page*, 80 Ky. 539.

Conversion—Sale by bailee:—If the bailee of property sell it to an innocent purchaser, his sale does not transfer the property to the purchaser, but the bailor may have recourse against the bailee or against the vendee. *Chism* v. *Woods*, Hardin 531.

Same—Ratification of unauthorized sale:—Where a warehouseman sold, without authority, goods in his care and the owner received the proceeds of sale and failed to promptly disavow the same by returning the money, *held* the sale had been ratified. *Clay* v. *Spratt & Co.*, 7 Bush, 334.

Same—What amounts to:—The mere possession of goods received by a bailee, without any claim or interest in the chattels,

in ignorance of the fact that his possession is adverse to that of the real owner, does not amount to a conversion; there must be an exercise of dominion or control over the property for the benefit of the bailee that is inconsistent with the claims of the real owner. He must assert some lien upon or have some interest in the property before there can be a conversion, in the absence of a demand and refusal. *Newcomb-Buchanan Co.* v. *Baskett,* 77 Ky. 658.

F.

Carriers—Warehousemen—Removal of goods—Reasonable time:—Several consignments of goods were received at their destination at different times, and were destroyed by fire in the carrier's warehouse. Question as to reasonable time for the removal of the goods discussed. *Held:* that a common carrier is an insurer of freight, and can only escape liability for loss or damage because of act of God, public enemy, or inherent defects in the goods. That a warehouseman is not an insurer and is only liable for such loss or damage as is caused by his negligence or failure to exercise ordinary care. The judgment was reversed and remanded for trial by jury. That if from the evidence plaintiff knew, or in the exercise of reasonable diligence could have known, when his goods arrived, the jury should find for the defendant if plaintiff failed to remove them from the warehouse within a reasonable time after he knew or by the exercise of reasonable diligence, could have known of their arrival. But if plaintiff did not, or in the exercise of reasonable diligence could not have known the time of the arrival of the goods, and did not fail to remove them within a reasonable time after he so knew or could have known, they should find for plaintiff. *Lewis* v. *Louisville & N. R. Co.,* 122 S. W. 184, 188.

G.

Goods in government bonded warehouse—Transfer from original packages—Debentures:—Merchandise in a bonded warehouse intended for sale and use in the United States cannot be transferred from the original packages. Section 3030, Rev. Stat. U. S. applies only to imported merchandise entered for export, on which duty has been paid, which is entitled to draw

back, and to debenture for such draw back. *W. H. Thomas & Son Co.* v. *Barnett*, 144 Fed. 338, affirming 135 Fed. 172.

H.

Storage charges—Paid twice—Warehouseman liable—Warehouse receipt:—If a warehouseman issue a receipt in which it is provided that the storage charges are to be paid when the goods are delivered, whereas in fact charges were paid at the time of the deposit of the goods, it was *held* that if the person to whom the receipt was transferred paid such charges that the warehouseman was liable to the original bailor for the amount paid by him. *Atherton* v. *Bonnie Bros.*, 9 K. L. R. 107.

Same—Not recoverable unless services performed:—Tobacco associations made agreements with farmers to handle all their tobacco which associations arranged for the prizing of the tobacco, its storage and sale. It was customary for the warehousemen to make advances to the farmers upon notes endorsed by the prizer. The business was interrupted by the discovery of the dishonesty of a member of the firm prizing the tobacco and which firm had endorsed the notes of farmers representing loans made by the warehouseman. The warehouseman sued the firm on the notes and also claimed the fees for the storage and sale of the tobacco. Held, the plaintiff was entitled to recover on the notes but not for the warehouse fees as it had not received the tobacco in store nor sold the same. *W. H. Carsey & Co.* v. *Swan and James*, 150 S. W. 534.

Lien—Superiority of pledgee's lien:—A warehouseman having notice as to who was the real owner of the tobacco stored with him, sold the same as the tobacco of the person to whom the same was pledged. It appeared that the owner had agreed with the warehouseman that the latter should sell the tobacco for him. In an action between the warehouseman and the pledgee for the purchase price, it was *held* that the contention of the warehouseman that he was entitled to deduct from such sum the amount which he had paid to the owner under the contract to ship the goods to him for sale could not be sustained, the lien of the pledgee being superior to that of the warehouseman. *Hare, McLeod & Co.* v. *Kelly*, 11 K. L. R. 309.

Same—None for other debts:—Neither the custody of the warehouseman nor the pledge of whiskey by delivery of the

warehouse receipts gives the warehouseman or pledgee, any general lien for debts not arising from relation of warehouseman or pledgee.

The plaintiff, a warehouseman, was merely a bailee, and when the warehouse receipts were delivered to him he became a pledgee as well; but neither relation gave him a general lien to cover debts or charges not connected with his position as warehouseman or pledgee for a specific purpose. Indeed, the express agreement of plaintiff to return the whiskey when the specified debts were paid would seem to preclude a claim of a lien for debts other than those specified. *Atherton Co.* v. *Ives*, 20 Fed. Rep. 894.

M.

Pledge—By factor—Pledgee acting in good faith—Amount of damages:—There is no substantial difference between the pledge made by a factor and a pledge made by a pledgee. The courts while holding that a factor has no right to pledge the goods of his principal have nevertheless allowed the amounts sought to be recovered of the innocent pledgee of the factor, to be reduced by the sums justly due from the principal to his factor. *First National Bank* v. *Boyce*, 78 Ky. 42.

Same—By bill of lading:—Property may be pledged by the transfer and delivery of the bill of lading representing same. *Petitt & Co.* v. *First National Bank of Memphis*, 4 Bush, 334; *Douglas, Receiver*, v. *Peoples' Bank of Kentucky*, 86 Ky. 176.

Same—Legal title does not pass:—To constitute a valid lien by a pledge of property, it is not necessary that the legal title should be transferred as in the case of a mortgage, but on the contrary, the title generally remains in the pledgor. *Id.*

N.

Loss by fire—Diligence—Effect thereon of appointment of government storekeeper:—The appointment by the Internal Revenue Department of storekeepers who are invested with the joint custody, with the warehousemen, of the warehouses and goods stored therein, does not lessen in any degree the diligence which the latter, as bailees for hire, are by the general laws required to exercise to prevent fire from being communicated to their houses or to the goods in their custody. *Macklin* v. *Frazier*, 9 Bush, 3.

Same—Failure to remove goods:—Where a fire occurred at night and warehouseman failed to remove plaintiff's whiskey, although there was an opportunity to do so, but a statute prohibited removal of spirits at any time except between sunrise and sunset, *held* it was the duty of the warehouseman to disregard this provision of the law only when the destruction of the whiskey was inevitable. *Id.*

Misdelivery—Liable for conversions—In regard to delivery, the warehouseman is obliged to deliver to his bailor or in accordance with his order. Any other disposition of the goods intrusted to him constitutes a conversion. *Jefferson R. R. Company* v. *White*, 6 Bush, 251.

Same—Same—Warehouseman must take precaution to see he is dealing with true owner:—Plaintiff shipped two hogsheads of tobacco consigned to herself as M. L. Irvin, at a certain warehouse. During transportation the name of the warehouse was altered to that of defendant warehouseman and upon arrival, a stranger representing himself as plaintiff, procured defendant warehouseman to take possession of, receipt for, and sell the tobacco and pay to him the proceeds. Action for its value by the owner against the warehouseman selling the property.

Held: that warehousemen were not only responsible for losses which arise by their neglect, but also for losses occasioned by innocent mistakes of themselves and their servants in making a delivery of the goods to a person not entitled to them. That having taken possession of property belonging to M. L. Irvin, it was their duty to see that the proceeds were paid to her or to some person authorized by her; that instead they had paid the proceeds to an entire stranger without the exercise of ordinary precaution to identify him as the party entitled to receive them. Judgment for defendant reversed. *Irvin* v. *Phelps & Co.*, 20 Ky. L. R. 242.

Same—Same—Same—Lien:—One N rented to D certain land and as rental was to receive one-half of the tobacco raised thereon. D removed all the tobacco and stored it with defendant warehouseman. Action by N to recover value of his share and also for sums he advanced. *Held:* that D could not wrongfully take the tobacco from N's possession and place it in possession of defendant so as to create any lien upon it superior to N's

right in it, or to deprive him of the right to have possession restored to him. *Brown* v. *Noel*, 21 Ky. L. R. 648.

Accident—There must be no negligence:—A warehouseman or other bailee cannot, by stipulating that he will not be liable in case of loss or damage resulting from accidents, escape his liability for any loss or damage due to his negligence. *Bridwell* v. *Moore*, 8 K. L. R. 535.

Loss of property by collapse of building—Verdict of jury to stand—No salvage when cost of redistillation exceeds value of whiskey:—Certain whiskey was destroyed by reason of the collapse of defendant's warehouse and of that saved, the cost of redistillation, required by the Federal Government, was largely in excess of the value of the whiskey saved. *Held:* that as the testimony as to the condition of the building and negligence of defendant were very conflicting and it having been properly submitted to a jury which found for the defendant, the verdict would not be disturbed. Also held that as the cost of redistillation was largely in excess of the value of the whiskey after redistillation, plaintiff was not entitled to salvage. *Mill Creek Distilling Co.* v. *Pleasure Ridge Park Distilling Co.*, 22 Ky. L. R. 998.

Burden of proof—Negligence:—With certain exceptions such as those in cases of common carrier and innkeeper, the burden of proof of negligence is upon the bailor, and mere proof of loss is not sufficient to put the bailee upon his defense. *Power* v. *Brooks & Parker*, 7 K. L. R. 204; *Craigs, Admn.*, v. *Lee*, 14 B. M. 119, distinguished.

Evidence—Custom—Usage:—In order to establish that a certain usage or custom exists, evidence must be received to show what has been generally done under similar circumstances and the admission of testimony as to particular acts is error. *Bridwell* v. *Moore*, 8 K. L. R. 535.

Measure of damages—Allowance of interest:—The value of the property at the date of conversion is the true criterion, and the jury, in their discretion, may allow or refuse to allow interest. *Newcomb-Buchanan Co.* v. *Baskett*, 77 Ky. 663.

P.

Insurance—Notice of loss:—Warehousemen had a large quantity of tobacco in store, upon which they carried open policies of

insurance. After destruction by fire they notified the owner of one of the hogsheads to advise them of the value thereof. The warehouseman received no reply to the notification and settled with the insurance company as best he could under the circumstances. It was *held* that this action was conclusive on the owner of the hogshead and that she could not be heard to complain afterwards. *Burks* v. *Sawyer, Wallace & Co.*, 11 K. L. R. 762.

Same—Custom—Effect of instructions:—Where there was a custom among warehousemen to insure all tobacco intrusted with them, such custom will not be binding on one who receives instructions from his depositor not to insure the tobacco. This is conclusive upon the warehouseman and exonerates him from liability for failure to insure. *Cottrell* v. *Branin, B. & G.*, 14 K. L. R. 580; *Western Dist. Warehouse Co.* v. *Hayes*, 16 K. L. R. 763.

Same—Effect of failure to make proof of loss within time stated in policy:—The failure to make the proof of loss of the insured goods, within the time stated in the policy, does not work a forfeiture thereof but such proof must be made before the beginning of the action upon the policy of insurance. *Dwelling House Insurance Co.* v. *Freeman*, 12 K. L. R. 894.

Q.

Warehouse receipt—As contract:—A warehouse receipt reciting the agreement between the parties is more than an ordinary receipt and in the absence of mutual mistake or fraud or want of consideration, must be treated as a contract fixing the rights of the parties as to the matter to which it relates. *Offutt & Blackburn* v. *Doyle*, 122 S. W. 156.

Same—Right to issue—Estoppel:—A jury was instructed to the effect that they must find, first, that the warehouseman was authorized to sell the goods in question and, secondly, that he was authorized to issue a receipt therefor. It was *held* this was error, as an authorization to sell carried with it the necessary authority to issue a warehouse receipt for the goods sold. Although section 7 of the warehouse Laws of 1869 requires a written permission from the holder of the first receipt, before the warehouseman can issue a second one, the act did not apply to the case above. Where the holder of the first receipt had

already instructed the warehouseman to sell the goods, he would be estopped to deny that the warehouseman had authority to sell and consequently the authority to issue the receipt. That the purposes of the above act are for the prevention of fraud and the encouragement of commerce; and the statute would not be applied in a case where the effect thereof would be to the contrary. *Farmer* v. *Gregory & Stagg*, 78 Ky. 475; *Taylor* v. *Farmer*, 81 Ky. 458.

Same—For his own goods:—A warehouseman may issue a receipt for his own goods stored in his warehouse. But warehousemen can assert no claim against such goods unless it be shown upon the warehouse receipt. *Greenbaum Bros. & Co.* v. *Megibben*, 10 Bush, 419; *Cochran & Fulton* v. *Ripley, Hardie & Co.*, 13 Bush, 495; *Ferguson, Jr., Assignee*, v. *Northern Bank of Ky.*, 14 Bush, 555.

Same—Distinguishing marks:—By act of March 6, 1869, it is required "that a warehouse receipt shall set forth the quality, quantity, kind and description of the property it represents, and which shall be designated by some mark." It was *held* that the usual or known trade-mark of a firm, found on all of its property stored in a warehouse, is not a sufficient designation by marks to comply with this statute. It must be such as will enable the party to identify the particular property and to distinguish it from that of a similar kind and quality; such is the plain purpose of the statutes. *Ferguson, Jr., Assignee*, v. *Northern Bank of Kentucky*, 14 Bush 555.

Same—Notice as to unpaid purchase price—What the receipt must contain:—A warehouse receipt for goods for which the purchase price has not been paid need not contain a statement as to the *amount* of the unpaid purchase price in order to protect the vendor. The receipt on its face must contain such facts as would put a person accepting the same on inquiry. *Western Bank* v. *Marion Co. Distilling Co.*, 9 K. L. R. 500; *Same* v. *Same*, 89 Ky. 94; *Pike* v. *Greenbaum*, 12 K. L. R. 423.

Same—Negotiability:—Warehouse receipts, when issued by the warehouseman, are negotiable at common law and are put upon the footing of bills of exchange, with like remedies thereon by the statute. There is nothing in the statute which limits their negotiable character to transactions had in this

state with citizens thereof. *Farmer* v. *Etheridge,* 24 Ky. L. R. 649.

Same—Same—What a holder thereof takes:—Although warehouse receipts are made negotiable by the law of this state, the holder of a receipt takes no better title, and stands in no better attitude than if the goods themselves had been delivered to him. Such receipts, no matter under what section of the act of 1869 they are issued, are in lieu of, and represent the property to which they refer, and their negotiability serves only to ward off any defense which the warehouse keepers may have. *First National Bank of Louisville* v. *Boyce,* 78 Ky. 42; *Greenbaum Bros. & Co.* v. *Megibben,* 10 Bush, 419.

Same—Same—Indorser's liability—Warehouse receipts are negotiable and transferable by indorsement:—The indorser's liability is the same as that of one who indorses bills of exchange. *Cochran & Fulton* v. *Ripley, Hardie & Co.,* 13 Bush, 495; *Greenbaum Bros. & Co.* v. *Megibben,* 10 Bush, 419; *Ferguson, Jr., Assignee,* v. *Northern Bank of Kentucky,* 14 Bush, 555; *Greenbaum* v. *Burns,* 13 K. L. R. 267.

Same—Negotiability—Innocent holder protected:—A warehouseman sold whiskey and accepted the purchaser's note in payment therefor and then issued to the purchaser a warehouse receipt, in which it was stated that the whiskey was deliverable on return of the receipt and payment of storage charges. The purchaser borrowed money and gave such receipt as collateral security for the payment of the debt. In an action, by the one who loaned the money to the purchaser, against the warehouseman, it was *held* that the whiskey should be sold, applying the proceeds first to the plaintiff's debt and the balance, if any, to the warehouseman for the payment of the debt due him, from the purchaser, on the purchase price and storage charges. *Greenbaum Bros. & Co.* v. *Megibben,* 10 Bush, 419.

Same—Same—Same—Absence of notice of advancements:—Where in good faith, money is advanced to a member of a firm upon warehouse receipts held by him for tobacco stored with the firm, and the warehouse receipts are used as collateral security for the payment of a loan, the title and constructive possession of the tobacco passed to the holders of the receipts. As no notice of a prior advancement by the firm to the owner of the tobacco was noted on the receipts, a claim for such advances is

subordinate to that of the holder of the receipts. *Farmer* v. *Ethridge*, 24 Ky. L. R. 649.

Same—Defense to:—Practically the only defense that can be made to a negotiable warehouse receipt in the hands of a third party is that such holder and the original purchaser were in collusion to defraud the warehouseman. Evidence examined and held not to sustain a defense of fraud. *Early Times Distilling Co.* v. *Earle*, 21 Ky. L. R. 1709.

Same—Same—Facts not constituting notice:—One B purchased a quantity of whiskey, and endorsed his acceptance of drafts payable in ninety days for the price. The warehouse receipts for the whiskey were delivered to him and he for a valuable consideration sold them to a third party for less than the whiskey cost him, representing that he had immediate use for the money to meet his obligations. Upon B failing to meet the drafts the whiskey was attached. *Held:* that the title to the whiskey passed to the holder of the receipts; that as the purchaser of the receipts neither knew of B's insolvency, nor that he had not paid for the whiskey, and that under the circumstances selling the whiskey for less than cost was not sufficient to put him on notice. That mere inadequacy of price is not sufficient to call for the interposition of a court of equity and the application of part of the proceeds of the receipts to a pre-existing debt due the purchaser of the receipts did not invalidate the transaction. *Theis* v. *Cammann & Co.*, 22 Ky. L. R. 1097.

Same—Same—For goods not actually in store—Bona fide holder:—The fact that a warehouseman has incurred a penalty, by issuing receipts for goods not in his warehouse, will not affect the validity of such receipt in the hands of one acting in good faith. *Cochran & Fulton* v. *Ripley, Hardie & Co.*, 13 Bush, 495.

Same—Same—Bona fide holder:—Where a warehouse receipt is taken for a prior indebtedness, the transferror having no right to assign the receipt, such person cannot be said to be a *bona fide* holder and thus take free and clear of all equities. *Carstairs, McC. & Co.* v. *Kelly*, 16 K. L. R. 64.

Same—Same—Same—Notice as to purchase price being unpaid:—A warehouseman who was also a wholesale liquor dealer sold a large quantity of whiskey to D., and took in payment therefor D.'s accepted draft due in thirty days. At the time of

the acceptance of the draft the warehouseman delivered to D. ten warehouse receipts representing the whiskey purchased. There was nothing stated on the receipt to show that the purchase price was unpaid, and it was therein stated that the whiskey was deliverable only upon the return of the receipt properly indorsed and on the payment of the government and state tax and storage charges due thereon. D. sold the whiskey to plaintiff who took the warehouse receipts without notice that the purchase price was not paid. On the above stated facts, it was *held* that the plaintiff was entitled to recover, that the warehouseman having issued and given currency to the negotiable receipts, he could not escape liability thereon at the suit of an innocent purchaser for value, without establishing by proof that the owner had actual notice that the purchase money had not been paid, and that it was the agreement that it should be paid before the whiskey should be delivered; that any other construction of it would enable the warehouseman to take advantage of his own wrong. That where a warehouseman issues such receipts he puts it in the power of the holder to treat on the face of it; he enables a holder to say, and to induce others to believe, that he has certain property which he can sell, or pledge for the loan of money. And if a warehouseman gives to the party who holds such a receipt a false credit, he will not be suffered to contradict the statement which he has made in the receipt so as to injure the party who has been misled by it. *Collins & Co.* v. *Rosenham*, 19 K. L. R. 1445; *McNeal* v. *Hill*, 1 Woll. W. (U. S.) 96.

Same—As collateral—Goods not in warehouse—Bona fide holder:—A warehouseman issued receipts as collateral security to one who had made a loan to him. At the time of this transaction the goods represented by the receipts were not in the warehouse. When the loan came due the same was renewed and the warehouseman issued new receipts to the lender. At this time the goods represented were actually in store. It was *held* that although the warehouseman had violated the statutes in the first instance by issuing receipts when goods represented thereby were not in his possession, this would not deprive the lender of his rights of a *bona fide* holder without notice, since the second receipts which he held were not in violation of the statutes. Further, that the extension of the loan was a sufficient con-

sideration for the issuance of the new receipts. *Cochran & Fulton* v. *Ripley, Hardie & Co.*, 13 Bush, 495.

Same—Same—Bona fide holder protected:—A warehouseman sold whiskey to A, who pledged the receipts as collateral security with B, the warehouseman retaining possession of the goods. Upon default in payment by A of his debt to B, the latter became owner of the warehouse receipts. In an action between B and the warehouseman it was *held* that B's rights were superior to the claim of the warehouseman for unpaid purchase money. *Greenbaum* v. *Burns*, 15 K. L. R. 716.

Same—Same—Receipt must contain distinguishing marks:—In an action by a bank against the assignee in insolvency of a warehouseman for the recovery of the value of property upon which the warehouseman had borrowed money and had delivered to the bank his warehouse receipts for the same, as collateral security, it appeared that there were no distinguishing marks upon the warehouse receipts except the usual trademark of the firm; it also appeared that there was a large quantity of other goods similarly marked. The court *held* that the requirements of the act of March 6, 1869, in regard to distinguishing marks, had not been complied with, for the marks must be such as will distinguish the property represented by the receipt from other property of similar kind and quality; accordingly the judgment given for the plaintiff, in the lower court, was reversed and the case remanded. *Ferguson, Jr., Assignee,* v. *Northern Bank of Kentucky,* 14 Bush, 555.

Same—As collateral—Duplicate:—Where a warehouseman pledged with one making a loan to him, a warehouse receipt in which it was stated that the warehouseman held certain goods for a third person, it was *held* that this was a fraud on its face for the warehouseman had no right to possess such a receipt nor to pledge the same, and that the receipt was void. *Smith* v. *Anderson & Co.*, 10 K. L. R. 725.

Same—Same—Bank protected where warehouseman fraudulently negotiates surrendered receipts:—A bank holding certain warehouse receipts for whiskey as collateral, permitted the old receipts to be exchanged for new ones on the same whiskey, surrendering the old ones to the distillery company for cancellation. The distillery company instead of cancelling them fraudulently negotiated the old receipts to an innocent holder for

value. *Held:* that there was simply an exchange of receipts; that the bank was not negligent in not seeing to the cancellation of the old receipts, and that the bank was entitled to the whiskey. *Doherty* v. *Merchants National Bank*, 21 Ky. L. R. 628.

Same—Same—By warehouseman without a license and against own goods—Invalid:—The proprietor of a grain elevator did not procure the necessary license to receive grain for storage. He issued so-called warehouse receipts on his own grain stored in his warehouse and negotiated the receipts at banks for loans. *Held:* following *Ferguson* v. *Northern Bank of Ky.*, 14 Bush 555, that the banks did not acquire title to the wheat mentioned in the receipts and did not have a lien thereon, but should be treated as general creditors. *Mercer National Bank* v. *Hawkins & Co.*, 20 Ky. L. R. 534.

Same—Assignee of warehousemen—Estoppel:—It was contended that the assignee of a warehouseman was estopped to deny a sale of property stored in his assignor's warehouse. This in an action against the assignee personally for the conversion of the property. It was *held* that he was not so estopped, and further, that the burden of proof was on the plaintiff to show title in himself. *Ferguson, Jr., Assignee,* v. *Northern Bank of Kentucky*, 14 Bush 555.

Same—Provisions in regard to shrinkage not changed by custom nor resolution of distillers—Sale of whiskey in government bonded warehouse:—Appellant sold to appellee his distillery plant. Appellant had previously stored a large quantity of whiskey in a government bonded warehouse and had issued receipts therefor. Such receipts stated, in accordance with an Act of Congress in force at the time of their issuance, that a certain allowance would be made for shrinkage during a period of four years. Subsequently Congress enlarged this period to seven years and the distillers of the state, including appellee, in a meeting held shortly thereafter agreed that they would treat the outstanding receipts as though the period for shrinkage allowance were seven years and not four. The sale to appellee was made after the above had transpired but the contract of purchase provided that appellee would care for the stored whiskey "as required in the warehouse receipts" which appellant had issued. Appellant showed that persons holding receipts had compelled him in

accordance with the resolution of the distillers to comply with the seven year requirement as to shrinkage. It was held the resolution mentioned was not binding upon appellee whose rights and liabilities were defined in an unambiguous written contract and that it was manifest by the provisions of such contract that appellee's liability was limited by the terms of the receipts to losses from shrinkage occurring only during the period of four years. *Wathen* v. *Ky. Distilleries and Warehouse Co.,* 140 Ky. 417.

Same—Liability:—The assets of the warehouseman in the hands of his assignee may be reached by the holder of an ineffectual warehouse receipt issued by the warehouseman, but such assignee is not personally liable therefor. *Ferguson, Jr., Assignee,* v. *Northern Bank of Kentucky,* 14 Bush 555.

Same—Duplicate of:—A firm of distillers having decided to issue new green receipts for old yellow ones, placed in the hands of their financial manager the green receipts. There were certain yellow receipts outstanding being pledged to secure a note held by a creditor. The financial manager did not take up these yellow receipts but issued new green receipts against the same whiskey to secure an indebtedness to another creditor. The note to former creditor was paid but only part of the yellow receipts returned. *Held* that this vested in the holder of the green receipts title to the whiskey represented by the returned yellow receipts and this so even though the returned yellow receipts were immediately pledged by the firm to obtain the cash with which to meet the check given by them to take up the note. *Block* v. *Oliver & O'Bryan,* 19 K. L. R. 1278.

Same—Same—Effect of retention of receipt after payment of note—Other indebtedness:—Under the statement of facts as set forth above where the person to whom the original yellow receipts were pledged does not deliver all of the same upon payment of the note, it was *held* that the evidence would not sustain the contention that he held such receipts as bailee of the warehouseman, but that it would be presumed that he retained them as collateral security for the payment of other indebtedness due him by the warehouseman. Further, that the contention that no liability on the part of the warehouseman existed on account of green receipts, until all of the yellow receipts were surrendered and cancelled could not be sustained, and that the ware-

houseman was liable to the one to whom the green receipts were issued for the property represented thereby. *Id.*

Same—Same—Counsel fees recoverable:—Appellant recovered counsel fees from warehouseman, such expenditure being occasiond by issue of duplicate receipts by warehouseman. *Held* correct. *Lupe* v. *Anderson Distilling Co.*, 9 K. L. R. 149.

Same—Same—Constitutes actual fraud:—The issuance of duplicate receipts to one who takes without notice of the fact that former receipts have been issued constitutes, according to principle and authority, actual fraud which cannot be avoided by declaration of honest motives. *Taylor* v. *Farmer*, 81 Ky. 458, *Farmer* v. *Gregory & Stagg*, 78 Ky. 475.

Same—On machinery used in business:—A manufacturing corporation purchased machinery and other property for use in its business, and issued warehouse receipts for same. *Held:* That the receipts were null and void and did not create a valid lien under section 4768. *Bell & Coggeshall Co.* v. *Ky. Glass Works Co.*, 106 Ky. 7, 23.

Same—Sale of property not covered by, a conversion:—A bank loaned money to a company, taking as collateral certain warehouse receipts. Later by authority of the borrower to sell the property represented by the receipts, the bank took possession of it, as well as of certain other property not mentioned in the receipts, and sold all the same on account of the indebtedness. *Held*, That the bank was liable for value of the property sold not embraced in the receipts. *Kirkpatrick's Exr.* v. *Rehkoph Saddlery Co.*, 144 Ky. 129.

Same—Taxation—Goods out of state:—In a suit to recover back taxes upon certain whiskey, it appeared that the whiskey had been shipped to Germany where it remained until portions of it were reshipped to the U. S. for sale, and that while the whiskey was in Germany the warehouse receipts there issued for it were used by the defendant as collateral security. *Held:* That a tax upon the warehouse receipts was in effect a duty upon the article itself; and as the goods were exempt from taxation, that the warehouse receipt could not be taxed as representing the goods. *Selliger* v. *Commonwealth of Kentucky*, 213 U. S. 200.

Same—Evidence of issuance—Entries on stubs not sufficient to prove ownership of receipts:—Warehouse receipts when proper-

ly drawn are not only negotiable at common law, but are expressly made so by statute, and are placed upon a footing with bills of exchange. Bona fide holders for valuable consideration and without notice of facts which impeach their validity between antecedent parties, hold a perfect title, and may recover the whiskey or its value at any time upon proper demand. The entries on the stubs of a warehouse receipt book, whilst competent to show the issuance of such a receipt, is not sufficient to establish ownership of the warehouse receipt in plaintiff five years after the date when it purported to have been issued. *Louisville & Nashville R. R. Co.* v. *Idelman*, 22 Ky. L. R. 306.

R.

Bill of lading—Negotiability:—A bill of lading does not possess the characteristics of bills of exchange or other negotiable instruments placed on the footing of bills of exchange. The peculiar characteristics of these instruments rest entirely upon statute or commercial usage sanctioned by express consent. A bill of lading has neither of these to rest upon. It does not represent money, and it does not possess the characteristics of negotiable commercial paper. When it is said that a bill of lading is negotiable, it is only meant that its true owner may transfer it by indorsement, or assignment, so as to vest the legal title in the indorsee. *Douglas, Receiver,* v. *Peoples' Bank of Ky.*, 86 Ky. 176; *Polland* v. *Vinton*, 105 U. S. 7.

S.

Bond—Removal of Warehouse—Resampling charges valid:—Laws of Tennessee pertaining to warehousemen considered and held, when a warehouseman gives the required bond and afterwards moves his warehouse, he is not required to take the oath anew and execute a new bond. That each of a number of warehousemen have the right to designate the same person as their deputy, and that the fee of $2 charged for resampling or reselling is not prohibited by statute and is not an extortion. *Bailey et. al.* v. *Wood et al.*, 114 Ky. 27.

U.

Taxation:—"Storage accounts" of a whiskey distillery are subject to taxation. *Commonwealth* v. *Ky. D. & W. Co.*, 143 Ky. 314.

Same—Property in warehouses liable to:—Personal property in the possession of a warehouseman is liable to taxation as such under sections 4020, 4023, and 4260 Kentucky Statutes. Upon failure of the owner of such property to list the same for taxation and pay the taxes thereon, the property may be taxed while in the hands of the warehouseman. *Commonwealth* v. *Tabbs Storage Warehouse & F. T. Line,* 150 S. W. 525.

Same—Tobacco in warehouses—Liable if it possess a taxable situs:—Tobacco growers entered in to an agreement with the Burley Tobacco Society and the Bourbon County Board of Control by which these two corporations jointly and severally had the power to handle, grade, ship and sell all of the growers' tobacco and to do all other necessary things to carry out the purposes of their organization. It was alleged in the petition in an action for the personal taxes on such tobacco, that the same was in the possession of said corporations in the city of Paris and had been duly assessed for taxation and was liable thereto under sections 4023 and 4025 of the Kentucky Statutes. It was held, under this statute, if the taxes upon the tobacco had not been paid by the growers, and if it had a taxable situs based on the actual situation of the property in the city of Paris, it was subject to taxation for the years it had a taxable situs in the city. The reversed the action of the trial court which had sustained a demurrer to the petition. *City of Paris* v. *Burley Tobacco Society et al.*, 157 S. W. 705.

Same—Liable for franchise tax on capital stock used in Cold Storage business:—A domestic corporation engaged in the business of manufacturing and selling ice and also in the cold storage business is liable for the franchise tax upon that portion of its capital which is invested in the cold storage business. The fact that it pays a license tax upon its ice business is not material nor can it be successfully maintained that the cold storage business is merely incidental to the ice business. *Merchants Ice and Cold Storage Co.* v. *Commonwealth,* 157 S. W. 717.

CHAPTER XVIII

LOUISIANA

LAWS PERTAINING TO WAREHOUSEMEN

The Uniform Warehouse Receipts Act is in force in Louisiana. It took effect January 1, 1909. Laws 1908 No. 221. Also this volume p. 1.

An Act governing the manner in which cotton-press receipts, warehouse receipts, or the receipts of other custodians of any property whatever, shall be issued, in all cases where such receipts shall or may be used or pledged as collateral security for money advanced or borrowed on faith of the property therein specified, and governing the delivery and disposal of the property for which such receipts may be issued.

Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened: That no cotton press, or other custodian or custodians of produce or property shall issue any receipt or other voucher for any produce, merchandise or other property, to any person or persons purporting to be the holder, owner or owners thereof, unless such produce, merchandise or other property shall have been actually received into store, or upon the premises of such cotton press, or other custodian or custodians, shall be in the store, cotton press or warehouse, or on the premises aforesaid, or under his or their control at the time of issuing such receipt.

Be it further enacted, etc.: That any person, firm or association who shall, or may be, or in any way become, the custodians of any property, goods, products, or merchandise whatever, and who may issue receipts therefor, shall not, under any circumstances, or upon any order or guarantee whatever, deliver property for which such receipts were issued until the party or parties to whom the receipts have been issued, or the legal holders thereof, shall have surrendered the same to the custodians for cancellation, and in default of a strict compliance with the provisions of this section of this act, they may be held liable by

the legal holder or owner of their receipt for the market value of the property therein described, as may be established by the quotations of prices of any commercial exchange in which the produce, merchandise or other property described in said receipt, may be bought and sold; and such quotations may be shown by a copy of the same certified to by the president, vice president, secretary or assistant secretary of such exchange, or by any other competent evidence . Sec. 2 of Act No. 72 of 1876 as amended by Act No. 176, Approved July 9, 1902. La. Acts 1902, pages 330, 331.

Be it further enacted, etc.: That no cotton press or other custodian or custodians of products or other property shall issue any second or duplicate receipt for any goods, wares, merchandise, grain, flour, or other produce or commodity, while any former receipt for any such goods, wares, merchandise, grain, flour, or other produce or commodity as aforesaid, or any part thereof, shall be outstanding and uncancelled, without writing across the face of the same, "duplicate," in a highly conspicuous manner. And any person who may issue warehouse receipts for any property of any kind whatsoever not actually in their possession and under their entire control, shall be and are hereby made liable for the market value of any and all property for which they may have issued such false receipts in manner as specified in foregoing section, and shall furthermore be liable to criminal prosecution as having aided and abetted in obtaining money under false pretenses.

Be it further enacted, etc.: That parties who may borrow money on the faith of warehouse receipts, representing property in store, shall file their affidavits with the pledges, that such property is theirs, the pledgors', personal property, or that it is the property of some party for whom the pledgor is acting as agent, factor, commission merchant, or in any other fiduciary capacity, and that said party is justly and truly indebted to the pledgor in an amount equal in value to the value of the property pledged, as specified in the warehouse receipt, for moneys paid to him, or paid by his order, and for his account, by the party or consignee making the pledge. The cashier of a bank or the secretary of any insurance company incorporated or working under any law in the United States or of this state is hereby authorized to administer the oath contemplated under the provisions of this

act. Any deviation therefrom shall render the party or parties so deviating liable for the value of the property, or any excess in value over and above the amount for which it may have been pledged in any manner specified in section one of this act, and to prosecution for perjury and also for obtaining money under false pretenses; provided, that the failure or omission from any cause whatsoever, of the borrower or pledgor to make, or the pledgee to require, the affidavit hereinabove mentioned, shall in no manner affect the validity of the pledge of the receipt, in all cases where the pledgor, at the time of making the pledge, was the owner of the property mentioned, or in any case where the pledgor had, at the time the pledge was made, any lien or privilege of any kind, on the property mentioned in the receipt; the intent of this proviso being, that the pledge of the receipt shall in all cases, notwithstanding the absence of the affidavit, be valid, to the extent of the interest or title which the pledgor had in, on, or to the property at the time the pledge was given.

As amended by Act No. 176, approved July 9, 1902; La. Acts 1902, pages 329, 331.

Be it further enacted, etc.: That the vendors' lien of five days' privilege, now allowed in commercial transactions for the payment of the purchase price, shall not be affected by the provisions of this act, except in case in which a warehouse receipt has been pledged as collateral for money borrowed. The holder of the warehouse receipt shall be considered and held as the actual owner of the property described in the receipt, and no clause of this act shall operate to the detriment or injury of the holder of a warehouse receipt, to the extent of the value of the property specified, made and issued in accordance with and under the provisions of this act; *provided*, that where the factor, agent or pledger may have wrongfully pledged, in violation of this act, any property, the lien of the owner shall be valid even against the third holder of the warehouse receipt.

Be it further enacted, etc: That should the pledger fail to pay his pledge note, secured by warehouse receipts representing the property therein described, on the day of its maturity, the pledgee shall, on the following day after the maturity of such pledge note, notify the pledger of same, and inform him that he may appoint one expert to act jointly with another one to be appointed by

the pledgee, which experts shall examine, appraise, and sell the goods or merchandise pledged, or such an amount of the same as they may determine to satisfy the claim of the pledgee, together with costs and the usual expenses. In case of doubt the two experts already selected will be authorized to appoint a third. In the event of the pledger refusing, or for any reason failing to appoint such expert within five days, allowing one additional day for every twenty miles that the residence of the pledgee may be distant from the residence of the pledgor, then the pledgee shall be and he is hereby authorized and empowered to appoint two experts, and they to appoint a third, all of whom shall be familiar with the value and management of the character of the merchandise involved; said experts to examine, appraise, and sell to the best possible advantage all of the produce pledged, or such an amount as may be necessary to settle the pledge note in full, together with such costs and necessary expenses as may be or have been incurred. The experts thus appointed shall proceed at once to take action and to complete their duties at the earliest practical day consistent with the usual and customary manner of selling the produce or merchandise in question, and said experts shall make their report immediately thereafter. They shall be authorized to sell at public auction, after five days' notice in a public journal published in the parish in which the pledgee resides, without legal process of any kind or description whatever; and the pledgee or holder of said warehouse receipt shall be in full and complete possession of the merchandise described in the receipt from and after the day on which the pledge note based on the merchandise may have matured; the surrender of the warehouse receipt to the custodian or custodians of the property, and cancellation of same, shall relieve and exonerate them from all further responsibility in the premises.

Be it further enacted, etc.: That said experts shall make a sworn statement of their proceedings and the disposition of the funds realized, and file said statement in the office of some duly qualified notary public, or in any court of record located in the parish in which the pledgee may reside. Said experts shall receive such fee as may be agreed upon, but they shall not be authorized to exact a fee in excess of the usual commission charged, according to commercial usage, on the character of the property upon which they may have administered.

Be it further enacted, etc.: That all warehouse receipts as by this act provided, shall be negotiable by indorsement in blank, or by special indorsement, in the same manner and to the same extent as bills of exchange and promissory notes now are.

Be it further enacted, etc.: That this act shall take effect from and after its passage, and all laws or parts of laws in conflict herewith be and the same are hereby repealed. Laws, 1876, No. 72, p. 113.

Above act construed—Owner protected where factor retains receipt in his own name and pledges the same:—Under the above act and the other statutes of this state pertaining to brokers, warehouseman, factors and warehouse receipts, it was held that it was not the intention of the general assembly that where a factor should be the holder of a warehouse receipt taken out by himself in his own name, that such statutes would confer upon parties the right to deal with him as owner and to absolutely ignore, under full protection of the law, the relation which the factor bore to the property and to its owner. *Holton & Winn* v. *Hubbard & Co. et al.*, 49 La. Ann. 715; *Insurance Co.* v. *Kiger*, 103 U. S. 352.

To amend the act No. 125 of 1880, approved April 10, 1880, with reference to corporations for works of public improvement.

Be it enacted by the General Assembly of the state of Louisiana: That section 4 of said Act No. 125 be amended and reenacted so as to read as follows: That any railroad, plank road, turnpike, canal, elevator or warehouse company, or any company for drainage, sewerage, land reclamation and levee building, established under the laws of this state, whether under and by special or general act, may borrow from time to time such sums of money as may be required for construction, repairs or acquisition of property or franchises, and for this purpose may issue bonds or other obligations, secured by mortgage or pledge, as the case may be, of the franchises and all the property, real and personal, and incomes, revenues, contributions and receipts of said companies, and payable in such terms and at such times and places as the board of directors, trustees, managers or commissioners may direct or designate, with power to sell, pledge or otherwise dispose of said bonds on such terms as the railroad

respectively may direct or deem expedient. Laws, 1882, No. 102, p. 155.

An act to define and regulate the business of public warehouses, and the issue of public warehouse receipts; to define and punish violations of this act, and to repeal conflicting laws.

Formalities and qualification:—That the proprietor, lessee or manager of any public warehouse, whether an individual, firm or corporation, before transacting any business in such warehouse, shall procure from the civil district court of the parish in which the warehouse or warehouses are situated, a certificate that he is transacting business as a public warehouseman under the laws of this state, which certificate shall be issued by the clerk of said court, upon a written petition setting forth the location and name of such warehouse or warehouses and the name of each person individually or a member of the firm, interested as owner or principal in the management of the same; or if the warehouse be owned or managed by a corporation, the names of the president, secretary and treasurer of such corporation shall be stated; and the said certificate shall give authority to carry on and conduct the business of a public warehouse within the meaning of this act, and shall be revocable by said court upon a summary proceeding before the court, on complaint by written petition of any person setting forth the particular violation of the law, and upon satisfactory proof, as in other cases at law. The person receiving a certificate, as herein provided for, shall file with the clerk of the court granting same, a bond to the state of Louisiana, with good and sufficient security, to be approved by said court, in the penal sum of five thousand dollars ($5,000) conditioned for the faithful performance of his duty as a public warehouseman, and his full and unreserved compliance with all laws of the state relating to such business.

Penalty for non-compliance:—That any individual, member of firm, or president, secretary or treasurer of a corporation, who shall transact the business of a public warehouse without first procuring a certificate as herein provided, or who shall continue to transact any such business after such certificate has been revoked (save only that he may be permitted to deliver property previously stored in such warehouse) shall, in summary proceedings on the written petition of any person setting forth the fact, as above, and upon satisfactory proof before the

court whose clerk is authorized to issue the certificates provided for in section first of this act, be adjudged to pay to the police jury of the parish where the warehouse is situated, or to the city of New Orleans, if that be the location of the warehouse, at the discretion of the court, a sum not less than one hundred dollars ($100), nor more than five hundred dollars ($500), and costs of court, for each and every day such business is so carried on; and the court may refuse to renew the certificate or to grant a new one, to any of the persons whose certificate has been revoked, within one year from the time the same was revoked. But nothing herein shall be construed to interfere with, repeal or conflict with the regular license laws of the parish, city or state.

Receipts, how issued, etc.:—That on application of the owner or depositor of the property stored in a public warehouse, the warehousemen shall issue over his own signature, or that of his duly authorized agent, a public warehouse receipt therefor, to the order of the person entitled thereto, which receipt shall purport to be issued by a public warehouse, shall bear date of the day of its issue, and shall state upon its face the name of the warehouse and its location, the description, quantity, number and marks of the property stored, and the date on which it was originally received in warehouse, and that it is deliverable upon the return of the receipt properly indorsed by the person to whose order it was issued, and on payment of all charges for storage. All such receipts shall be numbered consecutively, in the order of their issue, and no two receipts bearing the same number shall be issued from same warehouse during the same year, nor shall any duplicate receipt be issued, except in the case of a lost or destroyed receipt, in which case the new receipt shall bear the same date and number as the original, and be plainly marked on its face, "Duplicate;" and, provided, that no such duplicate receipt shall be issued by any public warehouseman until adequate security be deposited with, or to the order of, said warehouseman, to protect the party or parties who may finally hold the original receipt in good faith and for a valid consideration.

Not without previous receipt of goods:—That no warehouse receipt shall be issued except upon the actual previous delivery of the goods into the warehouse or on the premises and under the control of the warehouseman by whom it purports to

be issued, and the name of the warehouse shall invariably be specified in such receipt.

Delivery to holder of receipt:—That on the presentation and return to the warehouseman of any public warehouse receipt issued by him and properly indorsed, and the tender of all proper warehouse charges upon the property represented by it, such property shall be deliverable immediately to the holder of such receipt; but no public warehouseman who shall issue receipts for goods, shall under any circumstances or upon any order or guarantee whatsoever deliver the property for which such receipts have been issued, until the said receipts will have been surrendered and cancelled, and in default of the strict compliance with the provisions of this section of this act, he shall be held liable to the legal holder of the receipt for the full value of the property therein described, as it appeared on the day of the default, and shall furthermore be liable to the special penalties herein provided, in addition to the existing penalty attached to the crime of obtaining money or goods under false pretenses, or aiding and abetting therein. Upon delivery of the goods from the warehouse upon any receipt, such receipt shall be plainly marked in ink across its face with the word "cancelled," with the name of the person cancelling the same, and shall thereafter be void, and shall not again be put in circulation.

Above section construed:—Under this statute the holder of the receipt must tender payment of all charges in order to enable him to recover damages growing out of delay in not delivering goods when delivery was timely and properly asked. *Marks & Rittner* v. *New Orleans Cold Storage Co.*, 107 La. 172, 181.

Limitation of liability—Prohibited:—That no public warehouseman shall insert in any public warehouse receipt issued by him any language limiting or modifying his liabilities or responsibilities as imposed by the laws of this state, excepting not accountable for leakage or depreciation.

Negotiability:—That the receipts issued against property stored in public warehouses, as herein provided for, shall be negotiable and transferable by indorsement in blank or by special indorsement, and delivery in the same manner and to the same extent as bills of exchange and prommissory notes now are, without other formality, and the transferee or holder of such public

warehouse receipt shall be considered and held as the actual and exclusive owner, to all intents and purposes, of the property therein described, subject only to the lien and privilege of the public warehouseman for storage or other warehouse charges; provided, however, all such public warehouse receipts as shall have the words "not negotiable" plainly written or stamped on the face thereof, shall be exempt from the provisions of this section; and provided further, that no public warehouseman shall issue warehouse receipts against his own property in his own warehouse, but upon sale of such property in good faith, may issue to the purchaser his public warehouse receipt in form and manner as herein provided, which issue and delivery of the receipt shall be deemed to complete the sale, and shall constitute the purchaser full owner, as aforesaid, of the property therein described. Nothing in this last clause shall be construed to exempt the issuer of said receipt for his own goods in his own public warehouse from complying with and being subject in all respects to all the other sections and provisions of this act.

Penalties:—That any public warehouseman who violates any of the provisions of this act shall be deemed guilty of a criminal offense, and upon indictment and conviction thereof, shall be fined at the discretion of the court in any sum not exceeding five thousand dollars ($5,000) or imprisoned in the state penitentiary not exceeding five years, or both.

Act not applicable to private warehouses:—That nothing in this act shall be construed to apply to private warehouses, or to the issue of receipts by their owners or managers under existing laws, or to prohibit public warehousemen from issuing such receipts as are now issued by private warehousemen under existing laws, provided, that such private receipts issued by public warehousemen shall never be written on a form or blank indicating that it is issued from a public warehouse, but shall, on the contrary, bear on its face in large characters, the words "Not a Public Warehouse Receipt," in addition to any form of words imposed by laws heretofore in force.

Repealing clause:—That all laws and parts of laws in conflict with this act be and are hereby repealed in so far as they conflict. Laws, 1888, No. 156, page 216.

An Act granting a special lien and privilege to persons who sell agricultural products of the United States in chartered cities and towns of this state, on said products for the space of five days after the delivery of the same; and to repeal conflicting laws.

Be it enacted by the General Assembly of the State of Louisiana: That any person who may sell the agricultural products of the United States in any chartered city or town of this state shall be entitled to a special lien and privilege thereon, to secure the payment of the purchase money for and during the space of five days only after the day of delivery; within which time the vendor shall be entitled to seize the same in whatsoever hands or place it may be found, and his claim for the purchase money shall have preference over all others, and especially over any warehouse privilege or claim for warehouse charges, or any privilege or claim by the holder of any warehouse receipt. If the vendor gives a written order for the delivery of any such produce and shall say therein that it is to be delivered without vendor's privilege, then no lien shall attach thereto.

Be it further enacted, etc.: That all laws and parts of laws, and especially any part of act No. 156 of the Legislature of 1888 —approved July 12, 1888—in conflict with this act, be and the same are hereby repealed. Laws, 1890, No. 63, page 51.

By Act No. 98, approved July 7, 1906, entitled "An Act to further carry into effect Art. 297 of the Constitution of the state of Louisiana, and to preserve the public health."

(Acts La. 1906, page 163.) The State Board of Health is authorized and empowered to revise and amend the sanitary code. By the third section of this Act it is provided: "That any person violating any of the provisions of said sanitary code shall on conviction of any court of competent jurisdiction be fined not less than ten nor more than two hundred dollars for the first offense; not less than twenty-five nor more than four hundred dollars for the second offense; not less than fifty nor more than five hundred dollars, or imprisonment for not less than ten days nor more than six months, or both, in the discretion of the court, for each subsequent offense."

The right of the State Board of Health to formulate regulations under the above and other acts was sustained in State v. Snyder, 131 La. 3, and Board of Health v. Susslin, 132 La. 569.

Pursuant to authority conferred by said Act approved July 7, 1906, the State Board of Health has established the following rules and regulations respecting cold storage, which took effect July 1, 1913, and is known as Regulation No. 39.

Cold storage:—1. The term "Cold Storage" as used in these regulations shall be construed to mean a place artificially cooled to a temperature of 40 degrees Fahrenheit or below, but shall not include such a place in a private home, hotel, or restaurant, or refrigerator cars.

The term "Cold Stored" as used in these regulations shall be construed to mean the keeping of "Articles of Food" in "Cold Storage" for a period exceeding thirty days.

The term "Articles of Food" as used in these regulations shall be construed to mean and include fresh meat and fresh meat products, except in process of manufacture, fresh food fish, game, poultry, eggs and butter.

2. Any person, firm or corporation desiring to operate a public cold storage or refrigerating warehouse shall make application in writing to the Louisiana State Board of Health for that purpose stating the location of its plant or plants. On receipt of the application, the State Food Commission shall cause a examination to be made into the sanitary condition of said plant or plants, and if found to be in a sanitary condition and otherwise properly equipped for the business of cold storage, the State Food Commissioner shall cause a permit to be issued authorizing the applicant to operate a cold storage or refrigerating warehouse for and during the period of one year.

3. In the event that any place or places, or any part thereof, covered by a permit under the provisions of these regulations shall at any time be deemed by officials of the State Board of Health to be in an insanitary condition, it shall be the duty of the State Food Commissioner to prohibit the use under its permit of such specified place or places, or part thereof, as is deemed in an insanitary condition, until such time as it may be put in a sanitary condition.

4. It shall be the duty of any person, firm or corporation permitted to operate a cold storage or refrigerating warehouse to keep an accurate record of the receipts and the withdrawals of the articles of food, and the officials of the State Board of Health

shall have free access to these records at any time. Every such person, firm or corporation shall, furthermore, submit a quarterly report to the State Board of Health, setting forth in itemized particulars the quantity of food products held in cold storage. Such quarterly reports shall be filed on or before the 6th day of January, April, July and October of each year, and the reports so rendered shall show the conditions existing on the first day of the month in which the report is filed. The State Food Commissioner shall have authority to require such reports to be made at more frequent intervals than the time herein specified, if in his judgment more frequent reports shall be needed in the interest of the proper enforcement of these regulations or for other reasons affecting the public welfare.

5. No article of food intended for human consumption shall be placed in cold storage if diseased or tainted or deteriorated so as to injure its keeping qualities, or if not slaughtered, handled and prepared for storage in accordance with the Sanitary Code of Louisiana and such rules and regulations as may be prescribed by the Louisiana State Board of Health for the sanitary preparation of food products for cold storage. Any article of food if intended for use other than human consumption, before being cold stored, shall be marked by the owner in accordance with forms prescribed by the Louisiana State Board of Health in such a way as to plainly indicate the fact that such articles are not to be sold for human food.

6. It shall be the duty of the Louisiana State Board of Health to inspect and supervise all cold storage or refrigerating warehouses in this State, and to make such inspection of the entry of articles of food therein as it may deem necessary to secure proper enforcement of these regulations. The authorized officials, inspectors and other employees shall be permitted access to such establishments and all parts thereof at all reasonable times for purposes of inspection and enforcement of the provisions of these regulations.

7. All articles of food when deposited in cold storage shall be marked plainly on the containers in which they are placed or on or in connection with the individual article with the date of receipt, and when removed from cold storage, shall be marked with the date of withdradal in plain letters in a conspicuous place.

8. No person, firm or corporation as owners or having control shall keep in cold storage any article of food for a longer period than twelve calendar months, except with the consent of the State Food Commissioner. The State Food Commissioner may upon application grant permission to extend the period of storage beyond twelve months for a particular consignment of goods, if the goods in question are found upon examination to be in proper condition for further storage at the end of twelve months. The length of time for which further storage is allowed shall be specified in the order granting the permission. A report on each case in which such extension of storage may be permitted, including information relating to the reason for the action of the officials of the State Board of Health, the kind and amount of goods for which the storage period was extended, and the length of time for which the continuance was granted, shall be included in the report of the State Food Commissioner.

9. It shall be unlawful to sell or to offer or expose for sale uncooked articles of food which have been held in cold storage without notifying persons purchasing, or intending to purchase the same that they have been so kept by the display of a sign marked "Cold Storage Goods Sold Here," and it shall be unlawful to represent or advertise as fresh goods articles of food which have been held in cold storage.

10. It shall be unlawful to return to cold storage any article of food that has once been released from such storage and placed on the market for sale to consumers, but nothing in this section shall be construed to prevent the transfer of goods from one cold storage or refrigerating warehouse to another, provided that such transfer is not made for the purpose of evading any provision of these regulations.

NOTE. For an act to regulate the employment of children, young persons and women in warehouses or workshops where the manufacture of any goods whatever is carried on or where any goods are prepared for manufacturing, see act No. 43, Laws of Louisiana, 1886, p. 55.

The charters of some cities and towns in Louisiana vest municipal authorities with certain control over warehouses located therein.

DECISIONS AFFECTING WAREHOUSEMEN

B.

Warehouseman—Responsibility in general:—It seems that a warehouseman will be held responsible for the loss of property

stored, in all cases where he fails to show that the loss occurred without his fault. *Thomas* v. *Darden,* 22 La. A. 413.

Same—No presumption of ownership:—The presumption of ownership resulting from possession is not applicable to factors, brokers and other avowed agents, with respect to money or property intrusted to them for the special purposes of their vocation. *Succession of Hardy Boisblanc,* 32 La. A. 109.

Same—Goods held subject to order of depositor:—A depositary is bound, in the absence of any judicial proceedings, to hold the property deposited, subject to the order of the depositor. A depositary cannot therefore be held liable in damages, in the absence of fraud, for obeying the orders of the depositor. *Britton* v. *Aymar et al.,* 23 La. A. 63.

Same—Failure to obey instructions—Liability:—Failure to obey instructions in regard to goods intrusted to the care of commission merchants will cause them to incur a liability to the owners for the value thereof. *Copes* v. *Phelps & Co.,* 24 La. A. 562.

Common carrier not entitled to license as warehousemen:—Permanent storage is not incidental to railroad business, hence carrier is not entitled to a license as a warehouseman under Act No. 101 of 1886, on ground that the storage of goods is incidental to its business. *State* v. *Southern Pac. Co.,* 52 La. A. 1822.

Default by warehousemen—Recovery:—The putting in default of a depositary is a prerequisite to enable the depositor to recover, where the thing deposited has been lost or destroyed. *James* v. *Greenwood,* 20 La. A. 297.

Title—Depositary cannot impeach:—A depositary cannot be permitted to introduce evidence to impeach the title of the depositor. *Graham & Anderson* v. *Williams,* 21 La. A. 594.

Goods pledged by factor—Owner protected—Surrender under judicial process—Warehouseman not guarantor of the title of stored property:—The owner of cotton shipped the same to his factor with the direction to hold it until a better price could be obtained. Without the consent of the owner, the factor stored the property and borrowed money upon the warehouse receipt therefor as collateral. The factor subsequently failed. In an action, brought by the owner, against the lender, the former ob-

tained judgment and then possession of the property, giving bond on appeal. The appellate court affirmed the judgment of the lower court, holding that the lender, by the indorsement of the warehouse receipt to him, took only such title as the factor had, and that the pledge by the factor was wrongful and invalid as to the plaintiff. Further, that the delivery, by the warehouseman, of the property under a judicial writ was, in legal effect, a compliance with the terms of the warehouse receipt, which stated that delivery would only be made upon the return of such receipt. *Insurance Co.* v. *Kiger,* 103 U. S. 352.

Conversion—Responsible for value:—A depositary who sells sugar deposited with him and converts the proceeds to his own use is responsible to the owner for its value. *Short* v. *Lapeyreuse,* 24 La. 45.

Same—Sale by depositary a theft:—A depositary who sells the deposit commits a theft. *McGregor et al.* v. *Ball,* 4 La. 289.

E.

Factor and principal—Nature of their relations:—The relation between factor and principal is not the ordinary relation between debtor and creditor. It is a relation of trust and confidence. It creates a contract in the nature of that which is known, in the civil law, as the irregular deposit. The factor is to be considered as undertaking to hold the funds confided to him by his principal as subject to his order, and to be ready to pay them over to him, deducting only his own charges and advances made in the course of his employment, and he cannot retain funds on the ground of having paid other claims against the principal, which he had received notice from the principal not to pay. *Nolan* v. *Shaw & Co.,* 6 La. A. 40.

Factors—Nature of contracts with:—The contract implied between principal and factor, in the ordinary transaction of business, partakes, in some respects, of the nature of the contracts both of loan and irregular deposit. Their current accounts are necessarily provisional until settled, and even after settlement may be rectified by either party on account of errors or omissions, subject to which every settlement is held to be made. *Bloodworth* v. *Jacobs et al.,* 2 La. A. 24.

Same—Same—Effect upon third persons:—It was never contemplated by the lawmakers that the mere fact that a factor

should be the holder of a warehouse receipt taken out by himself in his own name, should confer upon parties the right to deal with a factor, and to absolutely ignore, under full protection, the relations which he has to the property and to its owner. *Holten & Winn* v. *Hubbard & Co. et al.*, 49 La. A. 715.

Same—Pledge—Own debts:—A factor cannot pledge for his own debts, property consigned to him, nor can he give it in payment for his own debts. *Hadwin* v. *Fisk,* 1 La. A. 74; *Lallande* v. *His Creditors*, 42 La. A. 705; *Holton & Winn* v. *Hubbard & Co. et al.,* 49 La. A. 715.

Same—Same—Same—Defense:—A factor cannot pledge goods of his principal's for his own debts, and where the pledgee is cognizant of the ownership, he cannot in an action by the owner, avail himself of the defense that he has been misled by any act or omission of such owner. *Bonniot & Co.* v. *Fuentes & Co.,* 10 La. A. 70.

Same—Same—Creditor of owner:—A factor who holds a warehouse receipt may pledge the goods covered by the receipt, to the extent that he is a creditor of the principal. *Chambers, Holton & Winn* v. *Hubbard & Co. et al.* 51 La. A. 887.

Same—Investment of customer's funds:—A cotton factor, who by direction of his customer, invests the latter's funds, is not responsible to him for the illegality of the investment. *Allen, West & Brush* v. *Wheatstone et al.,* 35 La. A. 846.

Commission merchants—Own debt—Trustee:—A factor or commission merchant who resides in the city of New Orleans, and who accepts a consignment from a person acting as trustee, in a state where such titles are universally recognized, cannot compensate the claim against himself for the proceeds of the articles consigned, with a debt held by him against the person from whom the trust is derived. *Bell* v. *Powell,* 23 La. A. 796.

F.

Carrier—Temporary storage:—The plaintiff being engaged in the commission business had an agreement with the defendant to store from time to time a certain quantity of wheat in defendant's grain elevator, on condition that the wheat should be kept "on the move." Evidence and circumstances considered and held that defendant was not liable for deterioration in the quality of the wheat; that plaintiff did not ship the wheat promptly and

was responsible for the loss. *Trufant Commission Co.* v. *Yazoo & M. V. R. Co.*, 111 La. 634.

H.

Storage charges—Tender of:—Receipt holder must tender payment of all charges to enable him to recover damages for non-delivery. *Marks & Rittner* v. *New Orleans Cold Storage Co.*, 107 La. 172, 181.

Same—May be recovered although goods damaged:—On recovery by plaintiff for damage to property while in warehouse, the warehouseman is entitled to receive his storage charges on the damaged property. *Marks & Rittner* v. *New Orleans Cold Storage Co.*, 107 La. 171, 182.

I.

Change of form—Property in principal:—The product or substitute of a thing follows the nature of the thing itself, so long as it can be ascertained to be such. So the property of a principal intrusted to a factor for a special purpose is considered still to belong to the principal, notwithstanding any change of form it may have undergone, so long as it can be identified. *Bloodworth* v. *Jacobs et al.*, 2 La. A. 24.

Commingling of property—Loss pro rata—Contract for:—Where the volume of grain stored in an elevator, or of oil stored in a tank, is made up of contributions from different owners, and becomes "common stock," its partial destruction by fire, resulting from lightning or other fortuitous cause, must necessitate a pro rata distribution of the loss. But unless it appears that a commodity, deposited by different owners, has been made common stock, as a matter of fact, a contract, purporting to make it so, should be expressed in unmistakable terms. *Jennings-Heywood Oil Syndicate* v. *Houssiere-Latreille Oil Co.*, 127 La. 971, 998.

N.

Loss by fire—Liability—Diligence:—A depositary is not answerable, in any case, for acts produced by overcoming force, such as fire, unless he fail to use proper diligence. *McCullom* v. *Porter, Thomas & Foley*, 17 La. A. 89.

Liability for cotton unaccounted for:—The proprietors of a cotton yard and press will be held responsible for cotton deposited

in their warehouse, and which is not accounted for. *Marr et al.* v. *Barnes,* 1 R. 190.

Prior and subsequent damage to goods—Burden of proof:—Where defendant shows that cotton was damaged before he was authorized to take possession of it, it is incumbent on plaintiff to show that other damages were sustained and the extent thereof, before he can recover. *Farley, Jury & Co.* v. *Vanwickle & Co.,* 19 La. A. 9.

Damage—Necessary proof of condition:—In order to recover against a warehouseman for damage to the property stored (in this case a quantity of cow peas on cold storage) it is not necessary for plaintiffs to show that their goods were not affected by insect life when put in cold storage, or that the process of deterioration had not begun in the goods, but that the goods, by the usual and ordinary tests of commerce were classed as sound. *Marks & Rittner* v. *New Orleans Cold Storage Co.,* 107 La. 171.

Overpowering force—Means to preserve the goods:—In order to avoid liability for the loss of cotton on storage, the warehouse keeper must show that the loss occurred without his fault. He cannot be relieved by showing simply that the loss occurred by an overpowering force. He must also show that he used all possible means to preserve it. *Schwartz, Kauffman & Co.* v. *Baer,* 21 La. A. 601; *Levy et al.* v. *Bergeron,* 20 La. A. 290.

Same—Same—Insufficient protection:—Where the defendant, the keeper of a public warehouse, received a lot of cotton on storage, and gave a receipt therefor, it is not sufficient excuse for not delivery, when demanded, for him to show that soldiers were encamped near the warehouse and that it was commonly believed that they and the freedmen were stealing the cotton; that the back door of the warehouse could easily have been forced open at night, and the cotton taken out, and then closed again, without being discovered in the daytime. *Thomas* v. *Darden,* 22 La. A. 413.

Same—Depositary not liable—Where the depositary is not able to resist the seizure and consequent custody of deposited cotton by the authorities of the United States, he could not be held liable in damages for his failure to deliver it upon demand by depositor. *Britton* v. *Aymar et al.,* 23 La. A. 63; *McCul-*

lom v. Porter et al., 17 La. A. 89; *Yale v. Oliver & Drake*, 21 La. A. 454.

Same—Burden of proof:—Where defendant having shown a sufficient legal excuse (the cotton having been taken by the federal forces) for not delivering the property, the burden of proof falls on plaintiffs, before they can recover, to show that the cotton was lost to them through the fault or neglect of defendant. *Babcock & Kernochan v. Murphy*, 20 La. A. 399.

When not overpowering force, default not necessary:—Where an agent or mandatory, or person having property on deposit at a time when he is not menaced by any overpowering force, allows the property to be taken from his possession without the consent or authority of the owner, he becomes responsible therefor, and the putting of him in default by demand and refusal is unnecessary. *James v. Greenwood*, 20 La. A. 297.

Negligence—Temperature of cold storage:—Defendant received a quantity of peas on cold storage, a part of which were found to be damaged when withdrawn. *Held:* That defendant having been negligent in that the heaps of peas were too large and that it did not sufficiently look after the ventilation of the cold air, it was liable to plaintiff for the damage sustained. *Marks & Rittner v. New Orleans Cold Storage Co.*, 107 La. 171, 179.

O.

Same—Measure of damages—When cotton held to await better prices:—Where cotton was stored and held, by a warehouseman, by direction of the owner in order to obtain better prices than those prevailing, and the same was converted and sold, the measure of damages is not the price obtained for the cotton but the best price prevailing within a few months after the sale. *Pierson v. Canal Bank*, 106 La. 305; *Pierson v. Metropolitan Bank*, 106 La. 298.

P.

Insurance—Custom:—Where the practice or custom of a factor is to insure consignments of produce, and this is brought to the knowledge of his consignor by uniform charges for insurance in his accounts rendered, the factor will be deemed to have continued that custom until he gives notice to the consignor of the change, and he is responsible for any loss, consequent upon

his failure to insure, before such notice reaches the consignor. *Area & Lyons* v. *Milliken*, 35 La. A. 1150.

Q.

Warehouse receipt—Issue to factor and in his name and used as collateral—Owner protected:—The owner who ships under a bill of lading and hands the bill to his factor may be said to have more or less connection with that instrument when it is subsequently advanced by a third party as the basis of rights predicated by him upon possession of the bill by the factor, particularly if the delivery of the property is directed to be made to the factor or his order. If after the cotton has been received and the bill of lading therefor has fully carried out its purpose of delivery, the factor stores the cotton, takes a receipt for the same in his own name from the warehouse and makes use of the receipt as a basis for credit, the warehouse receipt evidences a contract with which the owner is disconnected; it is an original transaction between the factor in his own name and the proprietors of the warehouse to which the owner is not "a party" though he has an interest in the subject-matter. It is clear that any contract by which one person attempts to divest another of his property, without the owner's consent, express or implied, or through due process of law, is without force. *Holton & Winn* v. *Hubbard et al.*, 49 La. A. 715.

Same—Same—Interest of factor protected—To the extent that a factor is a creditor of his principal and holds a warehouse receipt for his claim, the principal is without power to question the form of the receipt; a factor, being, under operation of law, subrogated to the rights of his principal to the extent of which he is his principal's creditor. *Chambers, Holton & Winn* v. *Hubbard & Co. et al.*, 51 La. 887.

Same—Negotiability—Pledge by factor:—A warehouseman had issued receipts for cotton stored with him to one who represented himself as the owner thereof, but who was in reality only the factor of the owner and had no interest in the property stored. Such depositor subsequently pledged the receipts to secure the payment of a loan made to him. In an action brought by the owner against the lender, it was *held* that the latter, by the negotiation of the receipts to him, took only such title as the factor had, and a judgment awarding the property to the owner was affirmed. The possession and transfer of the receipt held to be

equivalent only to possession and transfer of the property itself. *Insurance Co.* v. *Kiger*, 103 U. S. 352.

Same—Rights of pledgee and of administrator of depositor:—A warehouseman issued a warehouse receipt for two hundred and twenty-five bales of cotton then actually in his warehouse but without specification on the receipt of the particular bales of cotton received, deliverable on surrender of the receipt, indorsed by the original holder. The depositor pledged this receipt to one of his creditors by indorsement of the receipt, and the pledgee gave immediate notice of the pledge to the warehouseman. The depositor subsequently deposited other cotton in the same warehouse, receiving receipts for the same, also without designating the particular cotton covered by them. He then died. At the time of his death only seventy bales remained in the hands of the warehouseman, the balance having been delivered under orders of court to parties who had successfully claimed ownership thereof. In a contest for the remaining cotton between the pledgee of the warehouse receipt and the administrator of the succession of the depositor, *held* that the former was entitled to recover the cotton (citing *Cutters* v. *Baker*, 2 La. A. 572; *Williams* v. *Piner*, 10 La. A. 277; *Cormmach* v. *Floyd*, 10 La. A. 351; *Connery* v. *Webb*, 12 La. A. 272; *Newton* v. *Gray*, 10 La. A. 67). *State Nat. Bank* v. *Bryant & Mathers*, 49 La. A. 467.

Same—Description of goods:—Under Article 3158 of the Code the recital "warehouse receipts for 30 cases—bales—leaf tobacco" satisfies the requirement of this statute, and is a sufficient mention of "the species and nature of the thing given in pledge." *Blanc* v. *Germania National Bank*, 114 La. 739, 743.

Same—Pledge of—Statute must be strictly complied with—Receipt must represent specific goods:—Act No. 72 of 1876 requires that warehouse receipts shall be paragraphed "for hypothecation" and section 4 of the act requires the making of an affidavit. In a case where there was a failure to comply with the requirements of these two sections, it was *held* that there was not a valid pledge of the property represented by the receipts. A warehouse receipt in the form prescribed by the above act must stand for the goods themselves, in such a way that its delivery will operate as a delivery of the goods; but in order that this should be, the receipt must represent the specific goods, or,

at any rate, must represent a specific part of a common, or uniform mass; and a lot of cotton bales cannot be treated as a common or uniform mass, especially when, in addition to the physical disparity of the component bales there is a moral and legal disparity. The nature of the pledge of warehouse receipts is regulated in this state by the above mentioned act and non-conformity with the statute is fatal to any attempted pledge. *Pierson* v. *Metropolitan Bank*, 106 La. 298; *Pierson* v. *Canal Bank*, 106 La. 305.

Same—As collateral—Delivery sufficient:—The delivery of warehouse receipts into the possession of a pledgee is sufficient as a pledge without other formality. *Blanc v. Germania National Bank*, 114 La. 739, 743.

Same—Same—Must be a valid receipt issued to true owner or duly authorized agent—Sections 40, 41 *and* 47 *of Uniform Warehouse Receipts Act construed.*

Bills of Lading were obtained from a bank where they had been pledged to secure advances, by the giving of "trust receipts," by the pledgor. Such "trust receipts" *inter alia* provided that the pledgor obtained the bills of lading for the cotton mentioned, and if the cotton were sold he would hold the proceeds as trustee for the bank. The pledgor, having thus secured the bills of lading, stored the cotton and obtained negotiable warehouse receipts therefor which he pledged with another bank; which bank relied upon Section 40 to support its contention that the pledge to it was valid. The court held the pledge of the warehouse receipts void, that the pledgor had no authority under the "trust receipts" to store the cotton, obtain negotiable warehouse receipts therefor and pledge them for loans and that in order to pass title under Sections 40, 41 and 47 of the Uniform Warehouse Receipts Act, even to one taking innocently, there must be in existence a valid warehouse receipt for goods stored by the true owner or by some one having the right and authority to store them for him. A receipt issued by a warehouseman without the authority, knowledge or consent of the owner of the goods can have no more effect than a forged bill or note.

In re Dreuil & Co., 205 Fed. 568.

Same—Deposited by a factor and used as collateral by him—Judgment—Warehouseman protected:—A warehouseman who

had received cotton on deposit from a factor issued his warehouse receipt for the same, deliverable to the depositor or his order, only on surrender of the receipt. The factor who had deposited the cotton in his own name in the warehouse pledged the warehouse receipt to one of his own creditors. Certain parties claimed a portion of the property in the hands of the warehouseman, alleging that the factor was without authority to pledge the cotton. The warehouseman called upon the factor who had deposited the cotton and on the holders of the warehouse receipts, that they might oppose the restitution, but judgment was rendered ordering the warehouseman to surrender the cotton to the claimants. *Held,* that the delivery of the cotton by the warehouseman to the claimants, under the judgment, protected him against any liability upon the receipts. C. C. 2934. *Bank* v. *Bryant & Mathers,* 49 La. A. 467.

Same—Attached to draft—Surrender on acceptance:—In the absence of instructions a collecting agent is authorized to infer that warehouse receipts were annexed to a draft to secure its acceptance, and were to be surrendered upon acceptance. *Moore & Sinnott* v. *La. Nat. Bank,* 44 La. A. 99.

Same—Act of 1876 does not apply to U. S. bonded warehouse receipts:—United States bonded warehouse receipts are not subject to the requirements of Act 72 of 1876, p. 113, sec. 2, which provides that receipts shall be marked "For hypothecation." They are not statutory instruments regulated by said act but mere ordinary warehouse receipts, regulated by commercial law, and not required to conform to said act to be susceptible of being pledged. *Blanc* v. *Germania National Bank,* 114 La. 739, 743.

R.

Bills of lading—Functions of:—The function of a bill of lading is different from that of ordinary commercial paper. It is not a representative of money, used for the transmission of money, or the payment of debts. It is merely a contract for the performance of a certain duty—a representative of goods or personal property to be delivered. *Lallande* v. *His Creditors,* 42 La. A. 705.

Same—Stipulations against loss by fire—Cannot excuse negligence:—A stipulation in a bill of lading, for the transportation of cotton, that the carrier shall not be liable for damage occa-

sioned by fire, will not exonerate it from responsibility for loss or damage from this cause if the fire be occasioned through the fault or ordinary negligence of the agents, servants or employees of the carrier. *Maxwell & Putnam* v. *Southern Pac. R. R.,* 48 La. A. 385.

Same—Not negotiable paper:—Notwithstanding, by statute, bills of lading may be made negotiable in form, they do not become possessed of all the incidents of negotiability that are attributes of bills and notes. *Lallande* v. *His Creditors,* 42 La. A. 705.

CHAPTER XIX

MAINE

LAWS PERTAINING TO WAREHOUSEMEN

How far shipper, factor or agent shall be considered the owner of goods under his control:—Every person in whose name merchandise is forwarded, every factor or agent intrusted with the possession of any bill of lading, custom house permit, or warehouse keeper's receipt for the delivery of such merchandise, and every such factor or agent not having the documentary evidence of title, who is intrusted with the possession of merchandise for the purpose of sale, or as security for advances to be made thereon, shall be deemed the true owner thereof, so far as to give validity to any lien or contract made by such shipper or agent with any other person for the sale or disposal of the whole or any part of such merchandise, money advanced, or negotiable instrument or other obligation in writing, given by such person upon the faith thereof. Rev. Stat. Me. 1903, ch. 33, sec. 1.

Not to extend to prior demands against agent:—No person, taking such merdandise in deposit from such agent as security for an antecedent demand, shall thereby acquire or enforce any right or interest therein other than such agent could then enforce. *Id.* ch. 33, sec. 2.

Rights of the true owner in such cases:—But the true owner of such merchandise, upon repayment of the money so advanced, restoration of the security so given or satisfaction of all legal liens, may demand and receive his property, or recover the balance remaining as the produce of the legal sale thereof, after deducting all proper claims and expenses thereon. *Id.* ch. 33, sec. 3.

Title to goods in possession of warehousemen passes to purchaser, or pledgee, by indorsement of warehouseman's receipt:—The title to merchandise stored in a public warehouse, or on the wharves and premises of the warehouseman, and in his pos-

session, passes to a purchaser or pledgee, in good faith, by the indorsement to such purchaser, or pledgee, but not in blank, of the warehouseman's receipt therefor, signed by the person to whom the receipt was originally given, or by an indorsee of the receipt and recorded in the books of the warehouseman with whom such merchandise is stored. *Id.* ch. 33, sec. 4.

Account of warehouse transactions to be kept:—Each warehouseman shall keep books in which shall be entered an account of all transactions relating to the warehousing, storing and insuring of merchandise and the issuing and the endorsement of warehouseman's certificates, which books shall be open to the inspection of any person interested in the property stored in the warehouse. *Id.* ch. 33, sec. 5.

Goods attachable as goods of person receipted to:—Merchandise stored with a public warehouseman may be attached as the property of the person named in the warehouseman's receipt therefor, when no indorsement of such receipt has been recorded on the books of the warehouseman; and, where such indorsement has been recorded, may be attached as the property of the last indorsee of the receipt shown by the books of the warehouseman, by leaving at the warehouse where the merchandise is stored a copy of the writ, with a copy of so much of the officer's return thereon as relates to the attachment of such merchandise. And such attachment is valid against any transfer which was not recorded in the books of the warehouseman, when the copy of the writ was left. *Id.* ch. 33, sec. 6.

Penalty for disposing of warehouseman's certificate without disclosing attachment:—Whoever indorses or assigns, or otherwise disposes of a warehouseman's certificate, after his interest in the property described in such certificate has been attached, without disclosing the attachment thereof to the person to whom such certificate has been indorsed, assigned or disposed of, if he has knowledge of such attachment, shall be punished by a fine not exceeding five thousand dollars or by imprisonment not exceeding three years. *Id.* ch. 33, sec. 7.

Who is a public warehouseman:—Any person, firm or corporation advertising or offering to receive merchandise on storage for other parties, shall be deemed a public warehouseman for the purposes of this chapter. *Id.* sec. 8.

Grain, etc., stored in public warehouse becoming mixed—Proceedings:—When grain or other property is so stored in a public warehouse that different lots or parcels are mixed together, so that the identity of the same cannot be accurately preserved, the warehouseman's receipt for any portion thereof shall be deemed a valid title to so much thereof as is designated in said receipt, without regard to any separation or identification. *Id.* ch. 33, sec. 9.

Goods, etc., remaining in warehouse one year may be sold at public auction—Demand shall first be made for payment of charges upon person depositing goods—Notice shall be given of sale—How proceedings of sale shall be disposed of:—Whenever goods, merchandise or any articles of personal property shall remain in a public warehouse for one year after the expiration of the time for which the charges shall have been paid, or for six months after the charges thereon have been lawfully demanded and left unpaid, the same may be sold at public auction, subject to the following conditions; the warehouseman, in case such demand has not been made, shall first demand payment of the charges thereon by registered letter directed to the person who deposited such goods, merchandise or articles of personal property in said warehouse, if such person left with the warehouseman his address to which the letter may be directed. After such demand, or in cases where no such demand is required or where no address was given to the warehouseman to which such letter may be directed, the warehouseman shall give thirty days' notice of the time and place of sale in a public newspaper published in the city or town where the warehouse is, or if no public newspaper shall be published in such city or town, then in any public newspaper published in the county in which such city or town is; said notices shall contain a brief description of the property to be sold, with such marks thereon as may serve to identify it, if it shall be so marked, together with the name of the person depositing such articles in said warehouse and the name of the owner thereof if known; and shall specify the time after the expiration of said thirty days, and the place, which shall be in the city or town where the warehouse is, at which the sale shall be made.

The proceeds of such goods, merchandise or articles of personal property so sold, after deducting the charges thereon,

including the cost of publishing such notice and sale, shall be placed to the credit of the owner of the goods, merchandise or other articles of personal property sold, if known, otherwise to the credit of the person depositing said goods, merchandise or articles of personal property, in the books of the warehouseman making the sale, and shall be paid to the owner thereof on demand, and the warehouseman shall not be liable for any greater sum than shall be received from said sale, less said charges thereon. *Id.* ch. 33, sec. 10.

Above section construed:—This statute repeals, by implication, the prior and general statute of c. 91, sections 48 and 56, R. S. of 1883, so far as it applies to warehousemen. A sale under the former statute is unauthorized and warehouseman is liable for conversion. *Stoddard* v. *Crocker*, 100 Me. 450.

Penalty for uttering forged receipts of delivery or deposit of goods, bonds, or securities:—Whoever fraudulently makes or utters a receipt or other written evidence of the delivery or deposit or any grain, flour, pork, wool or other goods, wares, or merchandise in any warehouse, mill, store or other building, when the quantity specified therein had not, in fact, been delivered or deposited in such building; or so makes or utters any receipt or other written evidence of the delivery or deposit with him of any bonds or other securities or evidences of debt, when the same have not, in fact, been so delivered and deposited, shall be punished by imprisonment for not less than one nor more than ten years. *Id.* ch. 127, sec. 2.

DECISIONS AFFECTING WAREHOUSEMEN

A.

Bailment—Bailee may sue in his own name:—A bailee of personal property, which is injured while in his possession, may sue in his own name and recover the amount of the injury in an action against the wrongdoer. *Little* v. *Fossett*, 34 Me. 545.

Same—Replevin:—The general owner of property in the hands of a bailee may maintain replevin against an officer, who, having attached the same as the property of the bailee, puts it in the hands of a receipter, by whom it is suffered to go back into the hands of the bailee—the attachment being not thereby dissolved. *Small* v. *Hutchins, Jr.*, 19 Me. 255.

Same—Bailee can give no lien:—A bailee can give no lien upon the property bailed, as against the owner. *Small* v. *Robinson,* 69 Me. 425.

Same—Stipulation against loss by fire—Posted notices:—A bailee may properly stipulate that he will not be responsible for goods lost by fire and this stipulation may be shown by proving a notice to this effect brought to the attention of the bailor. *Reinstein* v. *Watts,* 84 Me. 139.

Same—Assignment by bailor—Notice:—It is not a contradiction of the rule that a bailee shall not dispute his bailor's title to allow him to show that since the bailment the title has been assigned to another. *Roberts* v. *Noyes,* 76 Me. 590.

H.

Storage charges—Sale for—Statute:—Upon sale for unpaid storage charges, warehousemen must proceed under Act of 1897, ch. 304, p. 339 (now Rev. Stats. Me. 1903. Ch. 33, Sec. 10), and a sale under the provisions of Ch. 91, Sections 48 and 56, R. S. of 1883, will render him liable for conversion. *Stoddard* v. *Crocker,* 100 Maine 450.

Same—Chattel mortgage:—A chattel which had been sold under an agreement constituting a mortgage to secure the purchase price and duly recorded, was left by mortgagee when he vacated the premises. The landlord refused to deliver the chattel to the mortgagor until payment was made for storage. Action to recover the money paid under protest to secure the release of the chattel. *Held:* In the absence of any agreement, the common law does not give to a person, not an innkeeper or warehouseman, a lien on personal property for its storage and that the money so paid could be recovered. The Court also stated that the property being subject to a mortgage, the mortgagor could not by any act of his subject it to a lien which would take precedence of the mortgage. *Whitlock Machine Co.* v. *Holway,* 92 Maine 414.

R.

Bill of lading—Definition:—A bill of lading in the usual form is a receipt for the quantity of the goods shipped, and also a promise to transport and deliver the same. *O'Brien* v. *Gilchrist,* 34 Me. 554.

Same—Parol proof:—In so far as a bill of lading is a receipt, it may in a suit between the parties to it be controlled by parol evidence. *Id.*

Same—Stipulations against negligence:—Common carriers cannot stipulate for exemption from responsibility for losses occasioned by the negligence of themselves or their servants. *Sanger* v. *Portsmouth, S. P. & E. R. R. Co.*, 31 Me. 228; *Willis et al.* v. *Grand Trunk R. R. Co.*, 62 Me. 488; *Railroad Co.* v. *Lockwood*, 17 Wallace, 357.

Same—"Good order" construed—Burden of proof:—The signing of a bill of lading, acknowledging to have received the goods in question in good order and well conditioned, is *prima facie* evidence that, as to all circumstances which were open to inspection and visible, the goods were in good order, but it does not preclude the carrier from showing, in case of loss or damage, that the loss was produced from some cause, which existed, but was not apparent, when the goods were received, and which, if shown satisfactorily, will discharge the carrier from liability. But in case of such loss or damage, the presumption of law is that it was occasioned by the act or default of the carrier, and the burden of proof is upon the carrier to show that it arose from a cause existing before receipt of the goods for carriage. *Tarbox et al.* v. *Eastern Steamboat Co.*, 50 Me. 339.

Same—Sale before arrival of goods—Stoppage in transitu:—If a consignee assigned a bill of lading to third person for a valuable consideration, the right of the consignor to stop the goods *in transitu* as against such assignee is divested. This *held* to be the established rule of commercial law in England and in this country. The above is true when the assignment is made for a pre-existing debt. *Lee* v. *Kimball*, 45 Me. 172.

Bills of lading—Negotiability:—Bills of lading are transferable by indorsement, and when thus transferred by the consignee to a *bona fide* purchaser, without notice of adverse claims, they pass the legal title, and operate as a sale and transfer of the property to the indorsee. *Winslow* v. *Norton*, 29 Me. 419; *Lee* v. *Kimball*, 45 Me. 172.

CHAPTER XX

MARYLAND

LAWS PERTAINING TO WAREHOUSEMEN

The Uniform Warehouse Receipts Act is in force in Maryland. It took effect June 1, 1910, Laws of Maryland, 1910, Ch. 406, p. 46, Am. Code, Md. ,1911, Art. 14A, Vol. I, p. 318 (Legalized, Laws of Md., 1912, Ch. 21, p. 58), also this volume p. 1. Sections sixty and sixty-one of the Uniform Act are omitted. A new section, designated section sixty-one, is added and is as follows.

Bonded warehouses of the United States, known as distillery warehouses, as defined by and existing under the laws of the United States of America and situated in this State, shall be deemed to be warehouses within the contemplation and meaning of this section, and such distillery warehouses shall be subject to all the provisions of this Article not inconsistent with the laws of the United States regulating the conduct and operation of such distillery warehouses, and all warehouse receipts after February 27, 1906, issued by such a distillery warehouse shall be governed by and subject to all the provisions of this Article as fully to all intents and purposes as the warehouse receipts of any other warehouseman, corporation or person conducting a general warehousing business in this State.

NOTE. Undoubtedly Act of April 8, 1908, Ch. 548 Laws 1908, p. 9, has been repealed, as have also chapters 244 and 319, Laws 1908 in so far as they pertain to warehousemen.

Sec. 52. Warehouse receipts act construed:—The Court said, "We hold, then, that there is a manifest inconsistency and a plain repugnancy between section 52 of the Act of 1910 (the above section) and section 194 of article 27 of the Code, and that the two sections cannot stand together. . . . That article 14, section 10, of the Code, has been expressly repealed, and that article 27, section 194, has been repealed by implication, leaving in force the subject matter and penalties fixed by

the act of 1910, for the violation of those respective statutes." *State* v. *Gambrill,* 81 Atl. 10.

If any person entrusted with any money, drafts or checks, as advances against any grain or other merchandise purchased and stored in any elevator in the city of Baltimore or elsewhere, and for which certificates or receipts have been turned into such elevator or delivered to the parties with whom the same is stored to be shipped and transported from the city of Baltimore to the purchaser of said grain or other merchandise, shall for his own benefit and in violation of good faith neglect or refuse to deliver to the party so entrusting him with said money, drafts or checks, the draft or bills of exchange, with the documents for the shipment of the said cargo of grain or other merchandise, and the policies of insurance upon said grain or other merchandise, as soon as the shipment is completed and bills of lading delivered therefor, every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be imprisoned in the penitentiary not more than ten years nor less than one year, or be fined not more than five thousand dollars nor less than five hundred, or shall be both fined and imprisoned as aforesaid, in the discretion of the court. Public Laws, Md., 1904. Art. 27, sec. 195.

Fraud—Bills of lading:—No person or corporation, or agent or officer of any person or corporation in this State shall issue any bill of lading, receipt, acknowledgment or voucher whatsoever, for goods, chattels or commodities of any kind, to be transported on land or water, or on both, or any receipt, acceptance of an order or other voucher for goods, chattels or commodities, as on storage or deposit in this State, until and unless the whole of said goods, chattels and commodities shall have been actually received to be transported by such person or corporation in the one case, or shall be actually in the possession or custody or upon the premises, or under the absolute and exclusive control of such person or corporation, in the other case, at the time when such instrument shall be issued; and any principal person or corporation, or any agent or officer whatsoever, of any person or corporation wilfully violating the provisions or any provision of this section shall be guilty of a misdemeanor, and on conviction thereof shall be subject to a fine of not less than one thousand nor more than five thousand dollars, in the discretion of the court. *Id.* Art. 27, sec. 118.

Fraud—Breach of trust, bills of lading, elevator or warehouse receipts:—If any person or persons shall on his or their own behalf, or shall for on behalf of any other person or persons, or shall for or on behalf of any firm, copartnership or corporation, receive, accept or take in trust from any person, persons, firm, copartnership, or corporation any warehouse receipt or elevator receipt, or bill of lading, or any document giving or purporting to give title to or the right to possession of any goods, wares, merchandise or other personal property of any kind, under or subject to any written contract or agreement expressing the terms and condition of such trust; and if such person or persons so receiving any warehouse receipt or elevator receipt, bill of lading, or any document giving or purporting to give title to or the right to possession of any goods, wares or merchandise or other personal property of any kind shall, in violation of good faith, fail, neglect or refuse to perform or fulfill the terms and conditions of such trust as expressed in such written contract or agreement, then and in every such case such person or persons so failing, neglecting or refusing to perform or fulfill the terms and conditions of such trust shall, on being convicted thereof, be imprisoned in the penitentiary for a term of not more than ten years nor less than one year, or be fined not more than five thousand dollars nor less than five hundred dollars each per annun. *Id.* art. 27, sec. 119.

The governor, biennially, shall nominate and by and with the consent of the senate, appoint one inspector of tobacco, who shall be a tobacco grower and resident of one of the tobacco-growing counties of this State. He shall receive a salary of two thousand dollars per annum, shall have charge of all the State tobacco warehouses in the city of Baltimore, and his term of office shall begin on the first Monday of March next ensuing his appointment. Ann. Code, Md., 1911, Art. 48, Sec. 9.

The inspector so appointed shall, before entering upon the discharge of the duties of his office, give bond to the State of Maryland in the sum of thirty thousand dollars, with a surety of sureties to be approved by the treasurer of the State, conditioned for the faithful performance of the duties imposed upon him by law, which bond shall be recorded in the office of the clerk of the superior court of Baltimore city; and he shall, as soon as he shall have bonded and qualified as required by law, take charge of all the tobacco warehouses in Baltimore city

and all the tobacco, books, furniture, appurtenances and effects belonging to the same, and shall receipt to his predecessor in office for the same, and upon the appointment and qualification of his successor shall deliver the same to said successor, and take a similar receipt. Said inspector shall personally or by a sampler or samplers, in this article provided for, inspect all tobacco in said warehouses, but neither he nor any other person appointed to, or employed in said tobacco warehouses shall engage in the purchase or sale of tobacco (except that he may sell tobacco of his own raising), nor shall any person appointed to or employed in said warehouses receive any gift or emolument whatever, either directly or indirectly, for any service in the line of his duty other than his regular salary or wages; and an person violating the provisions of this section, shall be immediately dismissed from office or service. Each of the said samplers, before entering on the duties of his office, shall give bond to the inspector with a surety or sureties to be approved by said inspector, in the sum of two thousand dollars, conditioned for the faithful discharge of his duties, and the said inspector in his discretion, may exact a bond from the person or persons who receive and handle the moneys collected on account of the business of said warehouses. Said inspector shall have authority to dismiss any and all appointees and employes in said warehouses, whenever, in his judgment, it shall be for the good of the service; and any neglect of duty on the part of any employe shall be cause for his immediate removal by the inspector. *Id.* Sec. 10.

The inspector of tobacco shall have the power to appoint one chief clerk at a salary of twelve hundred dollars per annum; three assistant clerks each at a salary of nine hundred dollars per annum; two samplers of tobacco, each at a salary of twelve hundred dollars per annum; one receiving clerk, one shipping clerk, one weighing clerk and one distributing clerk, each at a salary of eight hundred dollars per annum; two sample tyers, each at a salary of seven hundred dollars per annum; one janitor, one finder, one elevator and stay-floor man, and ten screwmen, each at two dollars per day; and four laborers, each at one dollar and a half per day. The inspector may also, in his discretion, employ such additional help (clerical and manual) as may be necessary for the efficient and economical management of the warehouses; to be paid during the time employed

at the same rates as above fixed for similar services; and he shall keep in his office a current public record of such additional help employed by him, the duties to be discharged and the pay to be received by the same; and he may assign any appointee or employe to any work deemed by him necessary for the business of the tobacco warehouses; and he shall (as far as possible) equitably apportion the patronage at his disposal among the inhabitants of the tobacco-growing counties of the State. *Id.* Sec. 11.

The salaries and wages of the inspector and all his appointees and employes in and for said warehouses, as also all operating expenses of said warehouses, shall be paid from the receipts thereof, and from no other source. *Id.* Sec. 12.

The inspector shall have full charge of all the receipts and disbursements of said warehouses, except for repairs; and shall make a report quarterly to the comptroller on the first days of January, April, July and October of each year, showing the receipts and disbursements of each of said warehouses, with vouchers therefor, giving in detail the respective amounts received from outage, storage, cooperage, reconditioning, stays and sale of scraps, and also showing the respective amounts paid for labor, nails, lumber, hoops, incidentals, wages and salaries, and showing the cash balance for each quarter, and at the quarter ending July first in each year, shall pay over to the comptroller all moneys in hand remaining after paying all expenses and salaries of said warehouses. *Id.* Sec. 13.

In case of the absence of the inspector by reason of sickness or any other unavoidable cause, his duties, during his absence, shall devolve upon the chief clerk, unless the inspector designate some other clerk or employe to act in his place; and the person so acting shall qualify under oath for the faithful discharge of the same. *Id.* Sec. 14.

The hours of labor in the several tobacco warehouses in the city of Baltimore shall be from seven o'clock A. M., until twelve o'clock M., and from one o'clock P. M., until six o'clock P .M. *Id.* Sec. 15.

All tobocca landed or delivered at any of the warehouses in the city of Baltimore, for inspection, shall be taken charge of by the inspector, through his receiving clerk, and the parties delivering the same shall be entitled to receive, upon demand, the inspector's receipt therefor. *Id.* Sec. 16.

It shall be the duty of the inspector to cause each hogshead of tobacco landed or delivered at the warehouses to be numbered in succession, as received, and cause said number to be entered in a book kept for that purpose, together with the time said hogshead was received, the name of the vessel or other conveyance, if known to him, by which said hogshead was brought to the city of Baltimore and of the owner or consignee of said tobacco, and the initials or other trade-marks on said hogshead identifying the same, and when said hogshead shall be removed from said warehouses he shall cause an entry to be made in some book, kept for that purpose of the time when the same was removed, the name of the person to whom the same was delivered, and of the vessel or other conveyance by which the same was taken away. *Id.* Sec. 17.

It shall be the duty of each tobacco inspector to cause all tobacco in the warehouse to which he may have been appointed to be inspected as speedily as practicable in regular order as numbered without favor, affection or partiality to anyone; and each violation of the provisions of this section shall subject the offender to a penalty of one hundred dollars, to be recovered in the criminal court of Baltimore. *Id.* Sec. 18.

It shall be the duty of each inspector to cause each hogshead of tobacco before it is uncased, to be weighed, and the tobacco in each hogshead, and the cask itself, to be separately weighed in his presence, or that of his weighing clerk, in scales with weights of the proper standard; and the weight of each hogshead as first weighed, and the gross and net weight of the tobacco therein contained after inspection, to be entered in a proper book, with sufficient reference to its numbers and marks as previously recorded. *Id.* Sec. 19.

It shall be the duty of each inspector to cause to be marked with a marking-iron on the side of each hogshead of tobacco under his charge, the warehouse, number and weight of said hogshead, and the net weight of tobacco contained therein, and to cause the warehouse number of each hogshead to be marked with blacking on each head thereof. *Id.* Sec. 20.

Every inspector shall have uncased and break every hogshead of tobacco that may be delivered for inspection in not less than five different places for Maryland and Ohio and not less than three different places for Kentucky and Virginia tobacco and in as many more places as may be necessary to fully

determine the contents of said hogshead, and if the inspector shall be of the opinion that such tobacco is sound, clean and in good order, then he shall select from each break as many bundles as will correctly represent the different qualities of tobacco contained in the break, and the bundles so selected shall be considered the sample of the hogshead; he shall also have the hogshead properly marked with its number, the year of inspection and the names legibly written of the owner on each head and bilge and shall have the tare and net weight marked with iron on the bilge as directed in the preceding section. *Id.* Sec. 21.

Whenever any dispute shall arise concerning the correctness of any sample furnished by the inspector of tobacco under the seal of the State said controversy shall be referred to a committee of aribtration consisting of three persons to be selected as follows: one thereof shall be selected by the inspector, one thereof shall be selected by the claimant or claimants or his or their agents, and the two thus selected shall select the remaining member of said committee; provided, however, that no person shall be so selected, or if selected shall be competent to serve as a member of any committee of arbitration who shall have a direct or indirect interest in the tobacco in controversy. *Id.* Sec. 22.

The said committee of arbitration when duly constituted and appointed shall fully examine and investigate all the facts concerning the subject in controversy before them, and to that end they shall have power to send for persons and papers, to compel the attendance of witnesses, to administer oaths, and to examine witnesses on oath; they shall determine all questions which may be submitted to them by a majority vote, and shall assess whatever damages, if any, that may adjudge due by reason of any false or erroneous inspection, and from their finding or award there shall be no appeal; all damages shall be assessed upon the basis of the market value of the particular grade of tobacco on the date of the reclamation; and no claims on tobacco shipped to any point in the United States shall be considered or allowed after the expiration of six months from the date of its inspection, nor after the expiration of nine months from the date of its inspection, if shipped to any foreign country; nor shall any claim be allowed upon tobacco which shall have changed by fermentation. *Id.* Sec. 23.

The inspectors shall pay the amount of any award made in

writing and under seal by any committee of arbitration duly constituted, as heretofore provided, to the party or parties thereto entitled, within thirty days after the date thereof, and shall take the receipt of the claimant or his agent for the same, which said receipt together with said award signed and sealed by said committee of arbitration, or a majority of them, shall be returned by the inspector to the comptroller of the treasury in the inspector's next ensuing report thereafter and shall be a voucher for money expended. *Id.* Sec. 24.

If any inspector shall upon examination of any hogshead of tobacco have reason to suspect that the same is trash or false packed, he shall cause the same to be shaken out and repacked, and shall charge for so doing the sum of two dollars per hogshead, the same to be paid by the owner or his agent; and if any inspector shall find that the package, cask or hogshead containing said tobacco is constructed of green or unseasoned timber, it shall be his duty to uncase said tobacco and furnish a new and dry package, cask or hogshead for the same at the cost and expense of the owner of said tobacco or his agent; said cost and expense not to exceed, however, the sum of one dollar for each package, cask or hogshead so furnished. *Id.* Sec. 25.

It shall be the duty of the inspector to confine the sample of each hogshead of tobacco inspected, by tying them together with a strong tape run through the head of said sample in such manner as shall be most likely to prevent the bundles from separating or being pulled out, and shall fasten on said sample a pasteboard label on which shall be written the marks and number of the hogshead, the date of inspection, and the name or number of the warehouse, and shall seal said tape and label with sealing-wax, and shall stamp it with the seal of the warehouse. Whenever a hogshead of tobacco is redrawn or reviewed, the sample and label thereon of the original inspection shall be returned to the inspector, to be by him destroyed; and the label on the sample given at the redrawing or reopening of the tobacco shall show that the hogshead has been reinspected or reviewed. *Id.* Sec. 26.

Any person or persons who shall pull out or break off any leaf or leaves, or in any manner tamper with any sample of tobacco, shall be guilty of a misdemeanor, and shall, upon conviction thereof in the criminal court of Baltimore city, be fined not more than one hundred dollars for each offense; and no

person, except the inspector, sampler, sample-tyer or other designated employe shall be permitted to handle any bundle of tobacco, drawn for the purposes of a sample, until the same shall have been tied up and sealed as required by law; and any unauthorized person handling said tobacco in violation of the provisions of this section, shall pay a fine of twenty dollars for each offense, to be recovered before any police justice of the city of Baltimore, as other fines are now recovered. It shall be the duty of each and every employe in the State tobacco warehouses to report to the inspector any and all violations of the provisions of this section that may come to his notice or of which he may be cognizant; and it shall be the duty of the inspector to make a memorandum in writing, of each and every such violation reported to him as aforesaid, in a book to be kept in his office for that purpose, and to be open to public inspection. *Id.* Sec. 27.

If any certificate or note be lost or mislaid or destroyed the person entitled to receive the tobacco by virtue of such note or certificate may make oath before a justice of the peace to the effect of said note being lost and shall take a certificate to that effect from such justice of the peace to the inspector and deposit the same wtih him; then the inspector may deliver to such person a new note or certificate with marks, numbers, weights and date corresponding with the former note and shall thereby be discharged from all actions and demands on account of such former note or certificate. *Id.* Sec. 28.

No person shall be entitled to receive a new note or certificate in lieu of any note or certificate lost or mislaid unless he shall notify the inspector at whose house it was issued within twenty days after such note or certificate is first discovered to be lost or mislaid. *Id.* Sec. 29.

All tobacco inspected in any of the warehouses which may be condemned or stayed shall be carefully cased up and weighed and the gross weight and tare be entered upon a book kept for that purpose, together with the number of breaks in such hogshead as may be stayed, also the cause, whether for false packing, trash, order or wet. *Id.* Sec. 30.

All tobacco thus stayed shall, with all convenient dispatch, be shaken out, reconditioned and packed under the supervision of the inspector and reweighed and entered upon the inspection books as all other tobacco. *Id.* Sec. 31.

The inspector shall charge for reconditioning and repacking stayed tobacco the following prices per hogshead: For one or two breaks, one dollar; for full stay, two dollars, to be paid by the owner or his agent; and for redrawing hogsheads of Maryland and Ohio tobacco, fifty cents each; and for redrawing all other kinds, one dollar each, to be paid by the owner or his agent; and for outage, two dollars for every hogshead not exceeding eleven hundred pounds, and twelve and a half cents additional on every hundred pounds over eleven hundred pounds, to be paid by the shipper of the tobacco or his agent. *Id.* Sec. 32.

The owner of any tobacco that may be stayed or condemned shall have the privilege of removing the same from the warehouse free of all costs or charges whatever, either for outage, cooperage or storage; provided, however, that it shall not be lawful to remove any stayed tobacco from one warehouse to another, except as all other tobacco is removed. *Id.* Sec. 33.

All tobacco delivered at any of the warehouses in the city of Baltimore for inspection, in such condition as to require cooperage, shall be properly coopered and taken care of, and the owner or his agent charged for the same not less than twenty-five cents nor more than fifty cents for each hogshead thus coopered. *Id.* Sec. 34.

All scrap tobacco accruing in any of the warehouses in the city of Baltimore shall be sold by the inspector to the best advantage, for the benefit of the tobacco fund, and the proceeds accounted for with all other receipts in returns to the comptroller. *Id.* Sec. 35.

Each inspector shall, in the month of April, annually, cause to be inserted in some one of the Baltimore newspapers, once each week, for four successive weeks, an advertisement, stating the name of the warehouse, the weight, gross, tare and net, the number and the name or initials of any hogshead of tobacco that may have been inspected, which has remained in the warehouse for the space of four years, and the owners whereof are unknown to the inspector; and if such tobacco shall not be claimed within thirty days after the termination of the advertisement, the same shall be sold by the inspector in such manner as he shall deem best, and the proceeds be accounted for in the first quarterly return thereafter. *Id.* Sec. 36.

If the owner of any tobacco, sold under the preceding section, shall, within one year from the date thereof, satisfy the

comptroller that the tobacco so sold was his right and property, the comptroller shall draw his warrant on the treasurer for the amount of such sale, after deducting warehouse costs and charges. *Id.* Sec. 37.

No tobacco of the growth of this State shall be passed or accounted lawful tobacco unless the same be packed in hogsheads not exceeding fifty-four inches in the length of the staves, nor exceeding forty-six inches across the head; and the owner or his agent of tobacco packed in any hogshead of greater dimensions shall repack the same in hogsheads of the size herein prescribed, at his own expense before the same shall be passed. *Id.* Sec. 38.

Whenever so large an amount of inspected tobacco shall have accumulated in the warehouses as to delay inspections, the inspector shall have the right to rent storage for as much as may be necessary to remove. *Id.* Sec. 39.

No tobacco of the growth of this State, and in the hands of the planters, or their agents, shall be subject to any costs or charges for storage or warehouse rent; this provision not to apply to tobacco the growth of any other State, or the growth of this State which may have been sold to any purchaser or shipper. *Id.* Sec. 40.

For every hogshead of tobacco of the growth of this State, that shall remain in any warehouse, after being sold by the grower, or his agent, for a longer period than six months, and for every hogshead of tobacco of the growth of any other State, whether sold or unsold, that shall remain in any warehouse for a longer period than four months, the inspector of such warehouse shall charge the owner thereof the sum of fifteen cents for each month after the said six and four months, respectively. *Id.* Sec. 41.

In the absence of the State wharfinger, the inspector of tobacco shall have control of the wharves in front of the warehouses, so far as relates to the landing or cording of wood or other materials to the exclusion of tobacco, and vessels having tobacco or other conveyances having tobacco to deliver to such warehouses shall have preference over all others in the use of such wharves; no charge for wharfage shall be laid on any tobacco received at or delivered from any of the State warehouse wharves. *Id.* Sec. 42.

The name of the owner of every hogshead of tobacco delivered for inspection at any State warehouse in the city of Baltimore shall be legibly marked or stenciled thereon; and it shall be the duty of the inspector to retain for inspection every hogshead of tobacco not so marked or stenciled until the name of the owner thereof shall have been ascertained and placed thereon. *Id.* Sec. 43.

It shall be the duty of the several inspectors of tobacco to carefully return all bundles of tobacco, other than samples which may be drawn in sampling, and all bundles which may be displaced in uncasing tobacco to the hogshead from which the same were drawn or displaced; and any inspector of tobacco who shall knowingly violate the provisions of this section shall be deemed guilty of misconduct in office, and shall be liable to removal therefrom. *Id.* Sec. 44.

It shall and may be lawful for any grower or owner of tobacco grown in this State to sell the same either in the State or out of it, in hogsheads of any size or weight, or in boxes, or in any other kind or style of package, without being compelled to have the same inspected by the State inspectors, and without being compelled to place the same in the State warehouses for any purpose whatsoever, or to pay any charge for outage, storage or any other charge thereon, to the State or any of its constituted officers. *Id.* Sec. 45.

If any grower or owner of tobacco grown in this State shall desire to store such tobacco in any of the State tobacco warehouses, without having the same inspected by the State inspectors, and without the same being subject to the laws relating to inspections of tobacco, he may do so upon paying storage therefor at the rate of twenty-five cents per hogshead per month, or fractional part of a month, for the first two months that said tobacco shall remain in said warehouses, and fifteen cents per month or fractional part of a month for every succeeding month that said tobacco shall remain in said warehouses; but no charge for outage shall be made upon said tobacco, and all money received from said storage shall be credited to the warehouse receipts of the warehouse in which said tobacco shall be stored, but no tobacco stored in said warehouses under the provisions of this section shall be inspected in said warehouses by any private inspector; and the said tobacco may at any time be removed from said warehouse by the owner upon payment of the storage

in the same manner as if said warehouse was a private warehouse. *Id.* Sec. 46.

The comptroller, librarian, or other proper officer, shall furnish each tobacco inspector with a bound copy of so much of this article as relates to the inspection of tobacco, for his office use, the cost of the same to be paid out of the tobacco fund. *Id.* Sec. 47.

If any owner or owners of tobacco, or his, her or their agent or agents, shall believe that any of their tobacco has been incorrectly sampled, and shall so notify the inspector, before the sale thereof, and within ten days of the date of its inspection, the matter shall be referred to a committee of arbitration, consisting of three persons, to be selected as follows: One thereof shall be selected by the inspector, one thereof shall be selected by the owner or owners of the tobacco or their agent or agents, and the two thus selected shall select the remaining member of the committee, and said committee shall then have the power to require the said inspector, in charge of said hogshead or hogsheads of tobacco, to have the same re-opened, and if it shall be found that the sample does not correctly represent said tobacco, the said committee or majority of them, shall select a sample which shall correctly represent it, and the new sample shall be substituted, in the place of the rejected sample, at no cost to the owner or owners; provided, that if said sample shall be found by said committee to properly represent said tobacco, then the cost of the re-opening said tobacco shall be paid by the owner or owners of the same, and said costs shall be one dollar per hogshead. *Id.* Sec. 48.

The governor is authorized at the expiration of the term for which tobacco warehouse No. 2 was rented by the governor, under the authority vested in him by the acts of the general assembly of 1892, chapter 41, to rent the said warehouse for another period, not exceeding four years, and upon such terms as he shall deem proper and beneficial to the State, and continue to rent the said warehouse from time to time and for such terms periods not exceeding four years for any one term, and upon such terms as he shall deem proper and beneficial to the State. The governor is also authorized to rent from time to time the tobacco warehouse known as "old No. 2 warehouse," upon such terms and for such time as he shall deem proper and beneficial to the State; but in the contract of renting said warehouse it

shall be stipulated that possession thereof shall be delivered to the State upon such day as shall be named by the governor in a notice in writing given by him to the person to whom the warehouse shall be rented, not less than sixty days before the day named for the delivery of said possession; the contract of renting hereinbefore mentioned shall be submitted to and approved by the attorney-general, and shall contain a stipulation that the said warehouse shall not be used for the purpose of the inspections of tobacco that would be in conflict with the tobacco inspection warehouses. *Id.* Sec. 49.

In Art. 81 pertaining to Revenue and Taxes under the heading of Distilled Spirits it is provided:

It shall be the duty of all distillers, warehousemen and others to exhibit all necessary information on oath if required, to the appeal tax court of Baltimore city, the several boards of county commissioners in the respective counties where distilleries are situate, and to any authorized officer proceeding to execute a distraint or to collect the tax imposed under this sub-title; and a failure so to do upon demand made shall be deemed a misdemeanor and subject to indictment, and upon indictment and conviction shall subject the offender to a fine of not less than fifty dollars nor more than five hundred dollars. *Id.* Art. 81, Sec. 225.

Any warehouseman, custodian or agent paying the tax on distilled spirits herein provided for shall have a lien upon the distilled spirits covered by such tax. *Id.* Art. 81, Sec. 226.

DECISIONS AFFECTING WAREHOUSEMEN

A.

Bailment—When not countermandable:—Where money or goods are delivered to a bailee to be delivered to a third person, the bailment is not countermandable *after* the third person has assented thereto, if there is a valuable consideration for the bailment. *Creager* v. *Link*, 7 Md. 259.

B.

Reasonable care—Defined:—An instruction to the following effect, given by the court to the jury, defining the duty of a warehouseman in the bestowal of reasonable care, *held,* on ap-

Note. Corporations may be found for the purpose of conducting the warehouse business under the provisions of art. 23, sec. 14 *et seq.* Maryland Public General Laws.

peal, to have been correct: "The said defendant was bound to use reasonable care in storing said goods in a place of safety according to their kind, and then by the practice of the same care keeping them from injury until called for by the plaintiff; that reasonable care in this connection means such care as a prudent man would give to the keeping of his own goods of like kind and under like circumstances." *Merchants' & Miners' Transportation Co.* v. *Story*, 50 Md. 4.

Same—Deposit of bonds in a bank:—In an action against a national bank for the recovery of the value of certain bonds which were stolen from its vault, such bonds being held by the bank as collateral security for the payment of any loans which it might, at subsequent times make to the plaintiff, the court instructed the jury that the bank would be responsible if the jury found from the evidence that the bonds had been stolen in consequence of failure on the part of the defendant to exercise such care and diligence in the custody and keeping of them as, at the time, banks of common prudence, in like situation and business, usually bestowed in the custody and keeping of similar property belonging to themselves. That the care and diligence should be proportional to the consequences likely to arise from any improvidence on the part of the defendant, and that the jury might take into consideration whether it would have been a proper precaution to have had an inside watchman in the bank at nights and on Sundays; that the jury should also consider the value of the bonds and liability to loss, the temptation they offered to theft, the difficulty of recovering them if stolen, the situation of the building and vault, and the sufficiency of the safe in which the defendant kept them at the time they were stolen. Such instruction *held* correct. *Third National Bank* v. *Boyd*, 44 Md. 47.

Bailment—Bailee cannot deny bailor's title:—A bailee is estopped to deny his bailor's title in any form. *McCullough* v. *Roots*, 19 How. 349.

Conversion—Action at law:—A conversion simply creates a pecuniary liability, and an action in equity will be dismissed for the want of jurisdiction unless there is some particular fund which the plaintiff seeks to recover on other ground for equitable relief. Even though a cause of action involves equitable features, if the legal remedy be complete, sufficient and certain, it must be

resorted to. *Cecil National Bank* v. *Thurber et al.,* 59 Fed. Rep. 913; *Buzard* v. *Houston,* 119 U. S. 347.

Burden of proof—Presumption of negligence when goods damaged or not returned on demand:—When the bailor has shown he stored the goods in good condition and that they were returned to him in a damaged state or not returned at all the law presumes negligence on the part of the bailee and casts upon him the burden of showing that he exercised such degree of care as was required by the nature of the bailment. *Security Storage & Trust Co.* v. *Denys,* 86 Atl. 613.

H.

Storage contract—Violations of owner's directions as to shipment of goods—Warehouseman liable:—When plaintiff directed defendant warehouseman to ship his goods in a forty foot car and over the Pennsylvania Railroad and the warehouseman shipped plaintiff's goods in two small cars and over the Baltimore and Ohio Railroad the warehouseman was held liable for the resulting injury occasioned during the unauthorized transportation. *Security Storage & Trust Co.* v. *Denys,* 86 Atl. 613.

N.

Goods damaged by water—Unusual rains—Reasonable care:—A carrier, acting in the capacity of warehouseman, stored goods upon its wharf, and, owing to unusual rains, there was a sudden rise in the river, the goods being damaged by water. It further appeared that the tide had been steadily rising all day and it was not until the water came with a rush that the defendant attempted to remove the plaintiff's goods. It was *held* that the defendant was liable in that it had not exercised reasonable care in its efforts to preserve the goods. *Merchants' & Miners' Transportation Co.* v. *Story,* 50 Md. 4.

Negligence—Instruction to jury:—In an action for damage by deterioration in the value of certain poultry in the cold storage warehouse of defendant, caused by flooding with water from a water main, *held* to be error to instruct the jury that if they found certain recited facts "then the law presumes that the damage to said poultry was caused by the negligence of defendant." Such an instruction was to declare a *prima facie* case to have been made out, and to shift the burden of proof from the plaintiff to the defendant by presumption of negligence, from cer-

tain facts recited, as a matter of law. Judgment for plaintiff reversed and new trial granted. *Baltimore Refrigerating etc. Co.* v. *Kreiner*, 109 Md. 361.

O.

Same—Measure of damages:—In an action by the assignee of a warehouseman against an insurance company, on a policy covering twenty-eight (28) bales of cotton, where it appeared that some of the cotton stored in the warehouse had been rescued, the following instruction to the jury, in ascertaining the amount of damages, *held* to be correct: "If the jury find from the evidence that the plaintiffs are entitled to recover, then, in ascertaining the amount of loss or damages which the plaintiffs are to recover, the jury ought to deduct such sum as from the evidence in the cause they may find is the proportion due to twenty-eight bales of cotton, in the distribution of the proceeds of sale of the rescued and saved cotton." *Hough, Clendening & Co.* v. *Prest. & Dir. Peoples' Fire Ins. Co.*, 36 Md. 398.

Same—Bonds stolen from vault:—Where bonds were stolen from vault of defendant, a national bank, the court instructed the jury that the proper measure of damages should be the value of the bonds at the time they were stolen and not the value at the time of demand. This instruction *held* correct. *Third National Bank* v. *Boyd*, 44 Md. 47.

P.

Insurable interest—Warehouseman has:—The law is well settled that a person having goods in his possession as consignee, or on commission, may insure them in his own name, and in the event of loss, recover the full amount of the insurance, and, after satisfying his own claim, hold the balance as trustee for the owner. *Hough, Clendening & Co.* v. *Prest. & Dir. Peoples' Fire Ins. Co.*, 36 Md. 398; *Home Insurance Co.* v. *Baltimore Warehouse Co.*, 93 U. S. 527; *London & N. W. Ry. Co.* v. *Glyn*, 1 Ell. & Ell. Q. B. 652.

Same—Double policies:—Where several policies are in favor of the same assured, on the same interest, in the same subject, and against the same risk they are what is known as double policies, and the insurance companies issuing them are bound to contribute their respective proportion of the loss. *Hough, Clen-*

Home Insurance Co. v. *Baltimore Warehouse Co.*, 93, U. S. 527; *Balto. Fire Ins. Co.* v. *Loney*, 20 Md. 38.

Q.

Warehouse receipts—Negotiability—Bona fide holder protected:—A warehouseman issued receipts for goods stored with him to one who represented himself as the owner of the goods, it appearing from certain tickets in the nature of bills of lading that such person was the consignee of the goods. The warehouseman afterward loaned money to him and accepted the warehouse receipts as collateral security. It subsequently appeared that the person who had deposited the goods was not in fact the owner thereof but that they had been consigned to him by the owner, in the course of business dealings. In an action against the warehouseman by the owner, it was *held* that the warehouseman was *bona fide* holder of the receipts and, therefore, judgment was rendered in his favor. Article 14, section 1 of the Code construed. *Farmers' Packing Co.* v. *Brown & Sons*, 87 Md. 1; *Tildeman* v. *Knox*, 53 Md. 612. (Note. The case of *B. & O. R. R. Co.* v. *Wilkins, etc.*, 44 Md. 11, *held* that bills of lading were not negotiable in the sense that promissory notes were, but this case was decided in the October term, 1875, whereas art. 14, sec. 1, of the Code was endcted in 1876.)

Same—Same—"Actual notice," what is equivalent to:—Where a bill of lading contains statements which would put a reasonable man on notice that other persons than the assignor had an interest in the goods, such statements *held* to be equivalent to actual notice, and the assignee does not take the property clear of all equities. If, under such circumstances, the assignee failed to follow up, by inquiry, and thus learn all about the transaction, it was *held* to be his own fault and he had no right to complain. *Jacob Dold Packing Co.* v. *Ober & Sons Co.*, 71 Md. 155; *Richards, Leftwich & Co.* v. *Meyer & Kross*, 57 Md. 10.

Same—Must be issued by warehouseman:—It is clear from the language of the Act of 1876 (chapter 262), which provides that bills of lading, warehouse, elevator, or storage receipts shall be negotiable in the same sense as bills of exchange, that the legislature never meant to declare that a mere receipt issued by one engaged in the canning business, for the goods canned by him, which were to remain in his possession subject to the or-

der of the purchaser, should pass title to the goods as against all other persons, and should also be negotiable in the same sense as bills of exchange and promissory notes. *State of Maryland* v. *Bryant,* 63 Md. 66.

R.

Bills of lading—Exemptions in:—Common carriers may, by special contract, limit their liability, as recognized by the common law, where there seems to be reason and justice to sustain the limitation. *McCoy & Parkhurst* v. *Erie & Western Trans. Co.,* 42 Md. 498; *Bankard* v. *B. & O. R. R.,* 34 Md. 197; *Railroad Co.* v. *Lockwood,* 17 Wall. 357.

Same—Evidence received to the effect that the goods were never received:—It appeared that the agent of the defendant comany had signed a bill of lading in which it was stated that certain goods had been received by the defendant. It was shown, on the trial, that the agent issued this bill of lading upon a promise that the railroad or cotton press receipts for the property would be subsequently delivered to him. The court *held* that it was proper to allow the agent to explain the circumstances under which he was induced to sign the bill and also to testify to the fact that the goods, represented to have been received, were not in fact delivered to him. *Lazard et al.* v. *Merchants' & Miners' Transportation Co.,* 78 Md. 1.

Same—Parol agreement and parol proof:—The legal operation of the contract contained in a bill of lading may be modified by adding thereto a parol supplementary agreement that the freight was to be at the risk of the shipper, and such special agreement may be established by parol proof. *Atwell & Appleton* v. *Miller,* 11 Md. 348.

CHAPTER XXI

MASSACHUSETTS

LAWS PERTAINING TO WAREHOUSEMEN

The Uniform Warehouse Receipts Act is in force in Massachusetts. It took effect October 1, 1907. Acts 1907, Ch. 582, p. 930. See also Supp. Revised Laws of Mass. 1902-1908, Ch. 69, p. 557, also this volume p. 1.

Public warehousemen, how licensed:—The governor, with the advice and consent of the council, may license in any city or town suitable persons, or corporations established under the laws of the commonwealth and having their places of business within the commonwealth, to be public warehousemen. Such warehousemen may keep and maintain public warehouses for the storage of goods, wares and merchandise. They shall give bond to the treasurer and receiver general for the faithful performance of their duties in an amount and with sureties to be approved by the governor, and may appoint one or more deputies, for whose acts they shall be responsible. A railroad corporation which is licensed as a public warehouseman shall not be required as such to receive any property except such as has been or is forthwith to be transported over its road or to give sureties on its bond. Rev. Laws, Mass., 1902, Ch. 69, sec. 1.

Action on bond of:—Whoever is injured by the failure of a public licensed warehouseman to perform his duty or by his violation of any of the provisions of this chapter may bring an action for his own benefit, in the name of the commonwealth, on the bond of such warehouseman. The writ shall be indorsed by the person in whose behalf such action is brought, or by some other person satisfactory to the court; and the indorser shall be liable to the defendant for any costs which he may recover in such action, but the commonwealth shall not be liable for any costs. *Id.* sec. 2.

Warehouseman to insure property, when:—Such warehouseman shall, upon request in writing by a party placing property with him on storage, cause such property to be insured for whom it may concern. A railroad corporation which is such warehouseman may itself be the insurer. *Id.* sec. 3.

Form of receipt:—Every such warehouseman shall give to each person who deposits property with him for storage a receipt therefor, which shall be negotiable in form, shall describe the property, shall state distinctly the brands or distinguishing marks thereon, the rate of charges for storing it and the amount and rate of insurance thereon, and, if it is grain, the quantity and inspected grade thereof; or, upon request, he shall give a similar receipt, non-negotiable in form, which shall have the words "not negotiable" plainly written, printed or stamped upon the face thereof. *Id.* sec. 4.

Transfer of title of goods stored:—The title to property which is stored in a public warehouse under a warehouseman's negotiable receipt therefor shall pass to a purchaser or pledgee by the indorsement and delivery to him of such receipt signed by the person to whom the receipt was originally given or by an indorsee thereof; and if so stored under a warehouseman's non-negotiable receipt, shall pass by assignment of such receipt when recorded on the books of the warehouseman issuing it. *Id.* sec. 5.

Special provision for grain, etc.:—If grain or other property which is stored in a public warehouse is so mixed or intermingled that the identity of different lots or parcels cannot be accurately preserved, the warehouseman's receipt shall give a valid title to so much of such grain or property as is designated therein, without actual separation or identification. *Id.* sec. 6.

Warehouseman to keep books:—Such warehouseman shall keep books in which shall be entered an account of all his transactions relative to the storing and insuring of goods, wares and merchandise, to the issuing of receipts therefor and to the disposition of proceeds of sales thereof under the provisions of this chapter. Such books shall be open to the inspection of any person actually interested in the property to which the entries relate. *Id.* sec. 7.

Notice of licensees, etc., to be published:—The secretary of the commonwealth shall, at the expense of each warehouseman,

give notice of his license and qualification, of the amount of the bond given by him and also of the discontinuance of his license by publishing the same for not less than ten days in one or more newspapers, if any, published in the county or town in which the warehouse is located; otherwise, in one or more newspapers published in the city of Boston. *Id.* sec. 8.

Disposition of perishable property:—If a public warehouseman has in his possession, in storage, upon a non-negotiable receipt, property of a perishable nature, or which by keeping, will deteriorate greatly in value, or, by its odor, leakage, inflammability or explosive nature, will be liable to injure other property, or of a value which will probably be insufficient to pay the storage charges thereof, he may, after notice to the person in whose name the property is stored to remove said property and to pay the storage and other proper charges thereon, and the refusal or neglect of such person so to do, sell the same at public or private sale without advertising. If, on reasonable inquiry, such person cannot be found, the sale may be made without notice. The proceeds of the sale, after deducting the expenses thereof and the storage and other proper charges, shall be paid or credited to the person in whose name the property was stored, or if he cannot be found, to the treasurer and receiver general, who shall pay it over to the owner thereof upon proof of his title thereto within one year after its receipt by the treasurer. If such warehouseman has made a reasonable effort to sell perishable or worthless property and has been unable so to do, he may dispose of it in any lawful manner, and shall not be liable for such disposition. *Id.* sec. 9.

Liability of depositor for charges:—If, from the sale or other disposition authorized by the preceding section, no proceeds are realized or the proceeds are insufficient to pay the expenses of sale and the storage and other proper charges, the person in whose name said property was stored shall be liable to such warehouseman for all proper charges against such property or for such amount as equals the difference between the charges due thereon and the proceeds of such sale or disposition. *Id.* sec. 10.

Sales to pay overdue charges:—A public warehouseman who has in storage any property for which a storage charge is

at least one year overdue, may sell the same by public auction after notice in writing to the person in whose name it is stored that such property will be sold at a time and place specified in the notice unless the amount due for storage, the advances made thereon and the expenses of advertising and sale are paid before the sale is made. From the proceeds he may retain said storage charges, advances made and expenses of advertising and sale. *Id.* sec. 11.

Service of notice of sale:—The notice required by the preceding section shall be served by an officer authorized to serve civil process or by some other person by delivering it to the person in whose name such property is stored at the time of such service or by leaving it at his usual place of abode, if within the commonwealth, at least sixty days before the time of such sale; in the event that the party storing such goods shall have parted with the same, and the purchaser shall have notified the warehouseman, with his address, such notice shall be given to such person in lieu of the person storing the goods. A return of service of such notice shall be made under oath. If the person in whose name such property is stored cannot, with reasonable diligence, be found within the commonwealth, such notice shall be published once in each of three successive weeks in a newspaper published in the city or town in which the warehouse is located, if any; otherwise, in one of the principal newspapers published in the county in which such city or town is located, the last publication to be at least thirty days before the time of sale. *Id.* sec. 12.

Disposition of proceeds of sales:—Such warehouseman shall, on demand, pay over the surplus of the proceeds of a sale authorized by section eleven to the person entitled thereto, but if it is not claimed within six months after such sale, he shall pay such surplus to the treasurer and receiver general and shall, at the same time, file with him an affidavit stating the name and residence of the person whose property has been sold, the articles sold and the prices obtained therefor, the name and residence of the auctioneer and a copy of the notice served or published with the return thereof. The copy of notice and return so filed shall be admitted as evidence of the giving of the notice. The treasurer and receiver general shall pay it over to

the owner thereof upon proof of his title thereto within five years after its receipt by the treasurer. *Id.* sec. 13.

Penalty for selling, etc., property deposited:—Whoever, with intent to injure or defraud, unlawfully sells, pledges, lends or in any other way disposes of, or permits or is a party to the unlawful selling, pledging, lending or other disposition of, any property stored in a public warehouse, without the authority of the person in whose name the same is stored, shall be punished by a fine of not more than five thousand dollars and by imprisonment in the state prison for not more than three years. *Id.* sec. 14.

For forging, etc., warehouse receipts, etc.:—Whoever falsely makes, utters, forges or counterfeits or whoever permits or is a party to the false making, uttering, forging or counterfeiting of, a warehouse receipt, certificate or other instrument, or of the signature of a warehouseman or of an indorser or other person to an instrument used to pass or to give title to property stored in a public warehouse, shall be punished by a fine of not more than five thousand dollars and by imprisonment in the state prison for not more than three years. *Id.* sec. 15.

Penalty for disposing of receipt after attachment, etc.:—Whoever, knowing that his interest in the property described in a warehouseman's receipt has been attached, indorses, assigns or otherwise disposes of such receipt without disclosing such attachment to the person to whom such receipt is indorsed, assigned or disposed of shall be punished by a fine of not more than five thousand dollars and by imprisonment in the state prison for not more than three years, or by imprisonment in jail for not more than one year. *Id.* sec. 16.

Proceedings in cases of detention or conversion of property by a public warehouseman, etc.—Court to determine rights of parties—Custody of goods, etc:—Whenever two or more persons claim any interest in property, or the proceeds or value of, or damages for the taking, detention or conversion of any property which is or has theretofore been deposited with any public warehouseman, or other depositary for hire, or with any pledgee as security for a loan, such bailee or pledgee may, either in any action against him for the recovery of said property, or for such proceeds, value, or damages, or as an original suit brought in the police, district or municipal court or before the

trial justice within whose judicial district such property is situated or was last held by such bailee or pledgee, file a petition stating the names and residences of all known claimants, after such notice as the court may order upon said petition to all such claimants, and within such time after the return of such order of notice as the court shall allow, such claimant or claimants shall file in said court a statement in writing of their several claims, and if no such claim is so filed the claimant or claimants may be defaulted. The court shall hear and determine the rights and interests of the respective parties in and to such property, proceeds, value or damages, and shall enter judgment accordingly, and upon such final judgment may order such return or delivery of the property, and may award such execution or executions for damages or costs or both for or against the respective parties to such proceeding as justice may require. Failure to comply with any such order for the return or delivery of such property may be dealt with as the court may direct. The goods may remain in the custody of the bailee or pledgee until the final judgment, and shall then be delivered in accordance with the order of the court. If the petition herein provided for be filed in an action of replevin, any order for the return of the property replevied, or any part thereof, may be for the return of such property to such party to said proceedings as may be adjudged to be entitled to the possession thereof; and if the order be not complied with, the bond in such case may, by leave of said court, be put in suit, in the name of the obligee therein, but for the benefit of the party or parties entitled to said property, and in such suit the court may award judgment and execution in accordance with the respective interests of the parties thereto. *Id.* Ch. 173, sec. 38, as amended by act approved March 27, 1909, Acts and Resolves, Mass., 1909, Ch. 227, p. 167 and further amended by act approved March 6, 1913, Acts and Resolves, Mass., 1913, Ch. 228.

Names of persons, etc., storing liquor in warehouses to be furnished to the licensing authorities:—*Be it enacted, etc., as follows:* Proprietors of storage warehouses shall furnish to the licensing authorities of any city or town, upon request of said authorities the names of all persons, firms or corporations storing liquor in their warehouses, and this information shall be for the use of the licensing authorities only. Act March 1, 1911, Ch. 77. Acts, 1911, p. 56, sec. 1.

Proprietors of storage warehouses who refuse or neglect to furnish information as specified in section one shall be punished by a fine of fifty dollars. *Id.* sec. 2.

Lists of personal property in storage warehouses, etc.:—*Be it enacted, etc., as follows:* Section 1. All persons, firms and corporations engaged in the business of storing or keeping merchandise in storage warehouses, shall, within ten days after a request therefor by the assessors of the city or town in which said property is so stored or kept, permit the said assessors to copy from their records a list of the names and addresses of all persons, firms or corporations who appear, on the first day of April in such year, to have any such property stored or kept in any such warehouse, but such persons, firms and corporations shall not be required to furnish lists of persons, firms or corporations which have property stored in warehouses which is composed of imported goods in original packages and owned by the importer, or of goods that have been received for export trade. Act May 21, 1912. Ch. 621, Acts, 1912, p. 626.

Penalty:—Whoever refuses or fails to comply with the provisions of this act shall be punished by a fine of not more than five hundred dollars, or by imprisonment for not more than ninety days. *Id.* sec. 2.

Cold storage of food products—Certain terms defined:—The term "cold storage," as used in this act, shall be construed to mean the storage of articles of food at or below a temperature of forty degrees Fahrenheit in cold-storage or refrigerating warehouses.

The term "cold-storage or refrigerating warehouse," as used in this act, shall be construed to mean an establishment employing refrigerating machinery or ice for the purpose of refrigeration, or a place otherwise artificially cooled, in which articles of food are stored for thirty days or more at a temperature of forty degrees Fahrenheit or below.

The term "article of food," as used in this act, shall be interpreted to include fresh meat, fresh meat products, except in process of manufacture, fresh food fish, poultry, eggs and butter.

An Act to regulate the cold storage of certain food products. Approved May 27, 1912, took effect September 1, 1912. Acts and Resolves, Mass., 1913, page 711, Chap. 652, Sec. 1.

License, etc.:—No person, firm or corporation shall operate a cold-storage or refrigerating warehouse without a license issued by the state board of health. Any person, firm or corporation desiring such a license may make written application to the board, stating the location of its plant or plants. On receipt of the application the board shall cause an examination to be made of the sanitary condition of any such plant, and if it is found to be in a sanitary condition and otherwise properly equipped for the business of cold storage, the board shall cause a license to be issued authorizing the applicant to operate a cold-storage or refrigerating warehouse for the period of one year. The license shall be issued upon payment by the applicant of a license fee of ten dollars to the treasurer of the commonwealth. In case any warehouse licensed under the provisions of this section or any part thereof, shall be deemed by the state board of health to be conducted in an unsanitary manner, it shall be the duty of the board to close such warehouse or part thereof, until it shall be put in sanitary condition, and the board shall have power also to suspend the license in case the required changes are not made within a reasonable time. Every such licensee shall furthermore submit a quarterly report to the state board of health on a printed form to be provided by the board. The report shall be filed on or before the twenty-fifth day of January, April, July and October of each year, and it shall state the quantities of articles of food placed in cold storage during the three months preceding the first day of the said months, respectively, and also the quantities of butter and eggs held on the first day of the month in which the report is filed. *Id.* Sec. 2.

Certain articles of food not to be placed in cold storage—Duties of the state board of health:—No article of food intended for human consumption shall be placed in cold storage if deemed by the state board of health to be diseased, tainted or otherwise unwholesome.

It shall be the duty of the state board of health to inspect and supervise all cold-storage or refrigerating warehouses in this commonwealth, and to make such inspection of the entry of articles of food therein as the board may deem necessary to secure proper enforcement of this act. The members of the board, or its duly authorized agents, inspectors or employees, shall be permitted access to such establishments and all parts

thereof at all reasonable times for purposes of inspection and enforcement of the provisions of this act, or of any other provision of law relating to food products. The board may also appoint and designate such person or persons as it deems qualified to make the inspections herein required. *Id.* Sec. 3.

Articles deposited to be marked, etc.:—All articles of food when deposited in cold storage shall be marked plainly with the date of receipt on the containers in which they are packed, or, if not packed in containers, on or in connection with the articles, except fish. *Id.* Sec. 4.

Limit of time, etc.:—No article of food shall be held in cold storage within this commonwealth for a longer period than twelve calendar months, except with the consent of the state board of health as hereinafter provided. The state board of health may, upon application, grant permission to extend the period of storage beyond twelve months for a particular consignment of goods, if the goods in question are found, upon examination, to be in proper condition for further storage at the end of twelve months. The length of time for which further storage is allowed shall be specified in the order granting the permission. A report on each case in which such extension of storage may be permitted, including information relating to the reason for the action of the board, the kind and the amount of goods for which the storage period was extended, and the length of time for which the continuance was granted, shall be included in the annual report of the board. *Id.* Sec. 5.

Marking of goods, etc.:—It shall be unlawful to sell, or to offer or expose for sale articles of food which have been held in cold storage without notifying persons purchasing, or intending to purchase, the same that they have been kept so by the display of a sign marked, "Cold Storage Goods Sold Here," and it shall be unlawful to represent or advertise as fresh goods articles of food which have been held in cold storage. *Id.* Sec. 6.

Articles released not to be returned, etc.:—It shall be unlawful to return to cold storage any article of food that has once been released from such storage for the purpose of placing it on the market for sale to consumers, but nothing in this section shall be construed to prevent the transfer of goods from one cold-storage or refrigerating warehouse to another, provided that

such transfer is not made for the purpose of evading any provision of this act. *Id.* Sec. 7.

Marking of certain packages, etc.:—Broken eggs packed in cans, if not intended for use as food, when deposited in cold storage shall be marked by the owners in accordance with forms prescribed by the state board of health, under the authority hereinafter conferred, in such a way as plainly to indicate the fact that they are not to be sold for food. *Id.* Sec. 8.

Rules and regulations:—The state board of health may make rules and regulations to secure a proper enforcement of the provisions of this act, including rules and regulations with respect to the use of marks, tags or labels and the display of signs, and may fix penalties for the breach thereof. *Id.* Sec. 9.

Penalty:—Any person, firm or corporation violating any provision of this act shall upon conviction be punished for the first offense by a fine not exceeding one hundred dollars, and for the second offense by a fine not exceeding five hundred dollars, or, if the offense is committed by a person acting either in his individual capacity or in behalf of a firm or corporation, by imprisonment for not more than thirty days, or by both such fine and imprisonment. *Id.* Sec. 10.

Report of commission on cold storage of food, etc.—Distribution:—Resolved, That there be allowed and paid out of the treasury of the commonwealth a sum not exceeding four hundred and fifty dollars for printing, in an edition of three thousand copies, a bound report of the commission appointed to investigate the subject of cold storage of food and of food products kept in cold storage, to be distributed as follows: one thousand copies for the use of the commission; two copies to each member of the present general court; two copies to the governor; two copies to the lieutenant governor and to each member of the council; two copies to the treasurer and receiver general; two copies to the auditor of the commonwealth; two copies to the attorney-general; two copies to the clerk of the senate and to the clerk of the house of representatives; one copy to each of the legislative reporters in the senate and in the house of representatives; and the remaining copies to be distributed by the secretary of the commonwealth in his discretion.

Resolve to provide for the printing and distribution of the report of the commission for the investigation of the subject of the cold storage of food and food products. Approved April 3, 1912, Acts and Resolves, Mass., 1912, page 879, Chap. 38.

Whenever eggs that have been in cold storage are sold at retail, or offered or exposed for sale, the basket, box or other container in which the eggs are placed shall be marked plainly and conspicuously with the words "cold storage eggs," or there shall be attached to such container a placard or sign having on it the said words. If eggs that have been in cold storage are sold at retail or offered or exposed for sale without a container, or placed upon a counter or elsewhere, a sign or placard, having the words "cold storage eggs" plainly and conspicuously marked upon it, shall be displayed in, upon or immediately above the said eggs; the intent of this act being that cold storage eggs sold at retail or offered or exposed for sale shall be designated in such a manner that the purchaser will know that they are cold storage eggs. The display of the words "cold storage eggs," as required by this act, shall be done in such a manner as is approved by the state board of health. An Act relative to the sale of eggs taken from cold storage. Approved April 25, 1913, Acts and Resolves, Mass., 1913, Ch. 538, Sec. 1.

Violation of any provision of this act shall be punished by a fine of not less than ten dollars nor more than five hundred dollars for each offense. *Id.* Sec. 2.

DECISIONS AFFECTING WAREHOUSEMEN

B.

Ordinary care:—A warehouseman is only obliged to bestow ordinary care in the custody of property intrusted to him. *Cox* v. *Boston & P. R. R. Co.*, 10 Met. 472; *Aldrich* v. *Boston & Worcester R. R. Co.*, 100 Mass. 31.

Same—Failure to deliver—Need not show precise manner of the loss:—A warehouseman who fails to deliver property bailed to him must account therefor; if lost he is bound to show that the loss occurred without a want of ordinary care or diligence on his part, but not necessarily the precise manner in which the loss occurred. *Lichtenhein* v. *Boston & P. R. R. Co.*, 11 Cush.

70; *President, Directors, etc., Conway Bank* v. *American Express Co.*, 8 Allen, 512.

Same—Liability coextensive to possession—Rule stated:—The obligation of warehousemen to exercise ordinary care for the protection and safety of goods committed to their custody depends upon and is coextensive with actual and continued possession. If they lose that possession through any omission of the duty thus attaching to them in that relation, they are liable for all the consequences that ensue from it. On the other hand, if without fault on their part the property is taken from their possession, or lost by means for which they are not responsible, they are not required to go in pursuit of it, or to incur any expense of time, labor or money in endeavoring to discover or regain it. *Sessions & Ano.* v. *Western R. R. Corporation*, 16 Gray, 132.

Conversion—Delivery to officer—Attachment does not constitute:—The defendant, a warehouseman, opened the door of a compartment in his warehouse in which the property of the plaintiff was stored and allowed an officer to attach the same. This was held in nowise to constitute a voluntary surrender of the property by the warehouseman, and further that the warehouseman, in allowing this attachment to be made, was not guilty of conversion. *Clegg* v. *Boston Storage Warehouse Co.*, 149 Mass. 454.

Conversion—Warehouseman with power to receive offers not authorized to sell—Lien—Innocent purchaser:—The plaintiff at the request of one J., who was a commission merchant and warehouseman, made certain advances to J. upon wool consigned to him. The plaintiff received from J. the receipt from the railroad for the wool and never surrendered possession thereof The wool was stored in J.'s warehouse and he was given authority by the plaintiff to negotiate sales thereof, to be reported to plaintiff for approval before being concluded. J. was a part owner of the wool but this fact was unknown to plaintiff. Without the knowledge of plaintiff, J. fraudulently pledged the wool to defendant for advances; the defendant had the wool removed to another warehouse, but he did not demand of J. a bill of lading or other proof of title and he knew J. was engaged in business as a warehouseman. Upon the above state of facts it was *held* that the plaintiff's rights as consignee in the wool

were not lost by placing the same in the warehouse of J. to be stored until it could be sold. Further that it was not the doctrine in Massachusetts that even if the plaintiff had known that J. was a part owner of the wool that the deposit of it in good faith with him as a warehouseman, with authority to negotiate sales as a broker, to be concluded by plaintiff, would have enabled J. to have vested a good title in an innocent purchaser by a sale made by him on his own account. Further, that J. was not a "factor or other agent intrusted with the possession of merchandise for the purpose of sale," within the meaning of c. 54, sec. 2, Gen. Stats., nor was J. "a person intrusted with merchandise, and having authority to sell or consign the same" within the meaning of c. 54, sec. 3, Gen. Stats. Finally that the plaintiff held a valid lien against the property; that defendant having sold the same this amounted to a conversion thereof, for which the defendant was liable to the plaintiff. *Thatcher* v. *Moors*, 134 Mass. 156.

G.

Bonded warehouses—Private warehouse—"Warehoused" construed:—The plaintiff, an importer, brought an action against the defendant, as collector of the port of Boston, for money paid to the defendant to which the latter was not entitled, under the warehouse law. It apeared that when a quantity of molasses, consigned to the plaintiff arrived at the port of Boston, the public warehouses at that port were filled. The plaintiff thereupon procured, at his own expense, accommodations in private warehouses, and the defendant assented to the deposit of the molasses at the places secured by the plaintiff, on condition that the latter would pay to the defendant, as collector for said port, one-half the usual rates of storage charges on similar goods. It does not affirmatively appear that while the goods were stored government officials were in charge thereof, but in the absence of such testimony the court assumed that this was the case. On the withdrawal, the sum of $145.19 was demanded of the plaintiff by the defendant, which was accordingly paid to him. The court *held* that from the agreed statement of facts, which was substantially as above, the action could not be maintained. *Atkins* v. *Peaslee*, 1 Clif. 446.

Same—Withdrawal through fraud—Misdelivery of spirits—Forfeiture:—It appeared that spirits had been fraudulently with-

drawn from a government warehouse, without the payment of the internal revenue tax, and had been mixed with other spirits. In an action by the government against the spirits, it was contended, in the behalf of one of the claimants, that as the collector had surrendered the spirits upon the production of a permit, the delivery had been made with proper authority. But, as it appeared that such permit had been obtained by fraud, it was *held* as respects the perpetrator of the fraud, the permit was a mere nullity. It was further *held* that as the spirits seized came from the rectifiers, mixed with the spirits fraudulently withdrawn from the bonded warehouse and other lots belonging to the claimants, so that they could not be distinguished, the United States were entitled to a forfeiture of a fair proportion of the mixture, even though the mixture might have been innocently made. *United States* v. *Two Hundred and Seventy-eight Barrels of Distilled Spirits*, 3 Clif. 261.

H.

Lien for storage charges—Partial delivery—Lien on remainder for full storage charges:—The plaintiff, the owner of goods, shipped the same by a common carrier to one who intended to purchase them, but owing to a defect in the quality, the latter refused to accept the goods. The carrier thereupon stored the goods and about ten days thereafter notified the consignee that it had done so. Subsequently an arrangement was made between the owner and the consignee for the sale of the goods to the latter. The carrier delivered a portion of the goods but refused to surrender the balance unless the warehouseman's storage charges were paid. It was *held* that this contention was correct and that the warehouseman had a lien on the goods retained for the full amount of charges against all of the goods. *Barker* v. *Brown*, 138 Mass. 340; *Lane* v. *Old Colony & Fall River R. R.*, 14 Gray, 143; *New Haven & Northampton Co.* v. *Campbell*, 128 Mass. 104.

Storage charges—Evidence:—Goods were left on storage in a certain building of plaintiff's and the evidence tended to show that plaintiff could and did give defendant the right to store them there and that defendant promised to pay for such storage. There was also evidence as to defendant's liability for cost of removal. *Held:* the weight of the evidence was for the jury,

and verdict and judgment for plaintiff for the storage charges was affirmed. *Cahill* v. *Phelps*, 198 Mass. 332.

Same—Special contract — Warehouseman liable:—Plaintiff stored with defendant warehouseman a large quantity of nerve beverage and ginger ale, a part of which were found to have become frozen while in the warehouse, and thereby damaged. Conflicting testimony as to the terms of the oral contract held properly submitted to the jury, which found that there was no neglect by defendant of their general duty as warehousemen, causing a loss, and also found there was a special contract between the parties that the goods should not be allowed to freeze. Verdict was rendered for plaintiff and the case affirmed on appeal. *Phenix Nerve Beverage Co.* v. *D. & L. Wharf and Warehouse Co.*, 189 Mass. 82.

K.

Trustee process—Replevin:—Goods were deposited by plaintiff with defendant warehouseman who was served with trustee process. Defendant refused to deliver goods to plaintiff on demand and plaintiff replevined them. *Held:* the effect of the trustee process was to attach the goods and until it was discharged, defendant was bound to hold them subject to any judgment which might be obtained. The trustee was not bound to decide at its peril whether they were or were not exempt from attachment. Although not in the hands of an officer, the goods were in effect in the custody of the law and plaintiff could not replevy them. *Cushman* v. *Boston Storage Warehouse Co.*, 207 Mass. 407.

Same—Warehouseman not liable for refusal to deliver to owner:—Plaintiff delivered to defendant, a common carrier, certain boxes, barrels and trunks containing household goods, apparel and other articles, and also a sewing machine, to carry to his office and keep for her. The goods were attached on trustee process, and defendant consequently refused to deliver them to plaintiff upon a general demand by her for them. In an action for conversion it was held the goods having been attached in his hands, the defendant was bound to keep them, so that if charged as trustee he could deliver them to the officer on execution, and in the absence of collusion he could not be deemed guilty of conversion. The demand being a general one,

defendant properly treated it as a demand of all the articles, whether exempt or not. Defendant might not be excused from delivering under a general demand, articles like a sewing machine, having a separate identity, easily distinguishable from the others, and clearly exempt from attachment. *Cornell* v. *Mahoney*, 190 Mass. 265.

Same—Bank receiving trunk for safe keeping, not liable under:—A trunk was placed in the vault of a bank merely for safe keeping. Its contents were never known to the officers of the bank and they had no right to open the trunk. Held, that as the trunk and its contents could not be lawfully separated by the officers of the bank, and as they are not chargeable in trustee process by reason of its contents, they are not so chargeable either in respect of the trunk or its contents. *Bottom* v *Clarke*, 7 Cush., 487.

M.

Effect of pledge—Possession of pledgor—Lien not always destroyed:—The mere fact that the pledgor has possession, so that in him the possession and the general ownership are united, does not as a matter of law destroy the lien of the pledgee, without regard to the circumstances under which, or the purposes for which, the possession was obtained. *Thacher* v. *Moors,* 134 Mass. 156; *Macomber* v. *Parker,* 14 Pick. 497; *Walcott* v. *Keith,* 2 Foster, 196.

N.

Loss by fire—At night—Employees present under no obligation to rescue goods:—In an action against a warehouseman for the loss of goods which had been destroyed by a fire, which consumed the warehouse and its contents, the evidence showed that the employees of the defendant were present during the fire and might, with safety to themselves, have rescued property belonging to the plaintiff, it was *held* that the warehouseman was not liable; that it was no part of the duty of the employees of the defendant to attend to the removal of goods from the warehouse in the case of fire at night. They were under no obligation to be present during the fire and their voluntary attendance imposed upon them no legal liability for the mere omission to do anything when on the spot. Whatever they did was done by them as volunteers, as neighbors, and as citizens—not as em-

ployees of the defendant. *Aldrich* v. *Boston & Worcester R. R. Co.*, 100 Mass. 31.

Same—Carrier liable as warehouseman—When Public Statutes, chapter 112, section 214, not applicable:—The defendant, a common carrier, was sued in tort by the plaintiff for the loss of his goods, which were destroyed, while in a freight house belonging to the defendant, by fire communicated from a locomotive of defendant. It appeared that the goods had been carried by the defendant for the plaintiff and that the transit has terminated. The court *held* that the action could not be maintained under Public Statutes, chap. 112, sec. 214. The goods of the plaintiff having been destroyed while in the possession of the defendant pursuant to a contract made between them, the plaintiff must seek his remedy under such contract. *Bassett* v. *Connecticut River R. R. Co.*, 145 Mass. 129.

Same—Same—Same—Property still held under contract for carriage:—Where, in a case similar to the above, it appeared that the contract for carriage had not been completed and that the goods were still in the possession of the defendant, as carrier, either in its cars or in its warehouse for a reasonable time in which the plaintiff could remove the same, the carrier was *held* liable for the loss of the goods. *Blaisdell* v. *Connecticut River R. R. Co.*, 145 Mass. 132.

Misdelivery—Change of ownership in warehouse—Goods in wrong name:—A suit was instituted against a warehouseman who had purchased a warehouse from one previously engaged in the business and who took an assignment thereof, together with a list of all the property in the warehouse and the names of the several owners thereof. It appeared from the evidence that there was a mistake made in such list and goods which, in reality, belonged to A. were therein stated to belong to H. The warehouseman notified H. to remove the goods, which he did. The evidence showed that the warehouseman acted entirely in good faith in the matter. The court *held*, in the action by the owner for the recovery of these goods, that the delivery by the defendant to H. did not constitute a conversion and that the warehouseman was not liable to the owner therefor. *Parker* v. *Lombard and another*, 100 Mass. 405.

Pleading—Burden of proof—Instruction to jury:—In an action against a carrier, charging it with liability as a warehouse-

man, the defendants alleged that the goods had been fraudulently abstracted from their custody. The judge ruled that to maintain the action, it was only necessary for the plaintiff, in the first instance, to show the receipt of the goods by the defendants and their failure to deliver them upon demand; that this imposed upon the defendants the duty of accounting for them, but that the defendants were not bound to show affirmatively in what precise manner the loss occurred, but only, if they were unable to prove how it occurred, to show clearly that they had exercised ordinary care respecting the goods, and that the loss did not happen from any negligence or want of ordinary care on their part. The judge further ruled, that if the property were taken by mistake from the depot, and the defendants exercised ordinary care in the matter, the defendants would not be answerable for a loss under such circumstances, but that if the agent of the defendants delivered it by mistake to a wrong person, the defendants would be responsible. On appeal the above ruling *held* correct. *Lichtenhein* v. *Boston & Providence R. R. Co.*, 11 Cush. 70.

Same—Burden of proof on plaintiff:—The plaintiff alleged that the defendant had been guilty of negligence in the care and custody of plaintiff's goods. The plaintiff simply proved non-delivery on demand and the court instructed the jury to find for defendant, stating that plaintiff must show the alleged negligence. This instruction *held* correct on appeal. *Lamb* v. *Western R. R. Co.*, 7 Allen, 98; *Roberts* v. *Gurney*, 120 Mass. 33; *Willett et al.* v. *Rich et al.*, 142 Mass. 356; *Murray* v. *International Steamship Co.*, 170 Mass. 166; *Gay et al.* v. *Bates*, 99 Mass 263.

Same—When burden of proof on warehouseman—Where declaration alleges demand and refusal but not negligence:—The plaintiff sued the defendant, a railroad corporation, alleging that it was liable as a warehouseman, that the property had been received by it and, upon demand, redelivery had been refused. In the answer the defendant admitted that it received the property, and alleged that without any neglect, default, or carelessness whatever on its part, the same was stolen from its warehouse. Upon these pleadings it was *held*, on appeal, that this form of declaration imposed a duty and burden upon the defendant who had put in special matter in defense of the action.

The case was clearly distinguished from *Lamb* v. *Western Railroad Corporation*, 7 Allen, 98, in that the allegations of the declaration were materially different. In the present case the court *held* that the breach of contract was not denied by the defendant, the issue being on the new matter alleged by it, and therefore, the burden was upon the party alleging such new matter—the defendant. *Cass* v. *Boston & Lowell R. R. Co.*, 14 Allen, 448.

Same—Warehouseman need not show precise manner of loss: —Where an action was instituted, charging the defendant with liability as a warehouseman, for the non-delivery of goods intrusted to him, the court *held* that the defendant was not bound to show the precise manner in which the loss occurred, but, if unable to do this, he might exonerate himself from that burden by clearly showing that the loss did not happen from any negligence or want of care on his part. *Lichtenhein* v. *Boston & Providence R. R. Co.*, 11 Cush. 70.

Same—Evidence—Letter offering to compromise, inadmissible: —A letter, written by an employee of the defendant, a warehouseman, before the institution of the suit, to the plaintiff, offering to allow the goods to be removed free of storage charges, for the purpose of settling, in this way, a claim for damages to the goods stored, which damages were alleged to have resulted from the condition of the warehouse, *held*, not admissible in evidence. *Gay et al.* v. *Bates*, 99 Mass. 263.

O.

Damages for loss of property—Right of consignee to recover: —A consignee of merchandise is entitled to recover full damages, and is responsible over to his consignor for any balance remaining after satisfying his claims upon the property. *Thacher* v. *Moors*, 134 Mass. 156; *Ullman* v. *Barnard*, 7 Gray, 554.

Same—Measure of damages—Ordinary rule:—The ordinary rule of damages is the market value of the property at the time of the conversion, with interest from that time. *Thacher* v. *Moors*, 134 Mass. 156.

P.

Loss by fire—Burden of proof on plaintiff to show negligence: —An instruction to the jury that the burden of proof was on the plaintiff to satisfy them that the fire was due to defendant's

negligence was correct. *Cox* v. *Central Vermont R. R.*, 170 Mass. 129.

Same—Testimony showing intoxication of watchman, receivable:—It was *held* competent in an action against a warehouseman for the loss of goods destroyed by fire, to show that the night watchman employed by the defendant was one in the habit of becoming intoxicated; that the watchman had indulged in this habit at a period several years before the occurrence, and that such habit had continued to the time of the fire. This evidence was receivable on the ground that the defendant, in the exercise of reasonable care, ought to have known of the habits of his watchman. *Cox* v. *Central Vermont R. R.*, 170 Mass. 129.

Same—Safety of place of storage—Question for the jury:—Whether or not the place which the defendant furnished for the plaintiff to store his goods was reasonably safe is a question for the jury. *Nealand* v. *Boston & Maine R. R.*, 161 Mass. 67; *Nichols et al.* v. *Smith et al.*, 115 Mass. 332.

Q.

Warehouse receipt—Negotiability:—A warehouse receipt, even when in terms running to order and assigns, is not negotiable like a bill of exchange, but merely a symbol or representative of the goods themselves, and the rights arising out of such a receipt correspond, not to those arising out of the indorsement of a negotiable promise for the payment of money, but those arising out of the actual delivery of the property itself under similar circumstances. *Commercial Nat. Bank* v. *Bemis et al.*, 177 Mass. 95; *Stollenwerck* v. *Thacher*, 115 Mass, 224.

Same—Same—Issued by private warehouseman:—The plaintiff held a receipt, for goods stored, issued by one who was not a public warehouseman in the meaning of the laws of Massachusetts. The receipt was indorsed to the plaintiff as collateral security for the payment of a debt due him by the bailor. The receipt was not in terms negotiable. Subsequently, the goods represented by the receipt were attached in an action against the owner. *Held* that the plaintiff did not take title to the goods as against the attaching creditor. *Hallgarten et al.* v. *Oldham*, 135 Mass. 1.

Same—Pledge of:—Where one held a warehouse receipt, as pledgee, and in turn pledged the receipt to secure a claim of

his, it was *held* that the title of the owner of the receipt was not impaired. There is no more reason to infer that one having possession of a receipt is the owner thereof than that his interest is something less than that. *Commercial Nat. Bank* v. *Bemis et al.*, 177 Mass. 95.

Order on warehouseman—Refusal to deliver—Jury—Usage:—The defendants, as public warehousemen, received for storage one hundred and fifty barrels of flour, portions of which were delivered from time to time, under plaintiff's orders, until but twelve barrels remained. The plaintiff delivered to the defendants an order for the *balance due*. With this order, the defendants refused to comply, insisting that the order should specify the number of barrels. It appeared that there was no express agreement, between the parties, that orders should specify the number of barrels, and that there was no such usage of trade in Boston. The court instructed the jury that the question of propriety and reasonableness of the demand of the defendant was one for them to decide. *Held* that the order for the balance of the flour held by the defendants was sufficient; that they should have delivered the balance upon the presentation of the order and that they were liable for their failure to do so. *Porter* v. *Hills*, 114 Mass. 106.

R.

Bill of lading—Defined—Shipper liable for freight charges:—It is a settled doctrine that a bill of lading is a written simple contract between the shipper of the goods and the shipowner, the latter to carry the goods and the former to pay the stipulated compensation for the services performed. The shipper is the bailor and he is liable for the compensation to be paid the shipowner. The master is not bound, at his peril, to enforce payment of freight by the consignee. *Wooster et al.* v. *Tarr and another*, 8 Allen, 270; *Blanchard* v. *Page*, 8 Gray, 281.

Same—Proof of loss—Burden of proof:—In an action on a bill of lading, by which a shipowner promises to deliver the goods "in like good order and condition as received, dangers of fire and navigation excepted" after proof of loss and failure to deliver, the burden of proof is on him to bring such loss and failure to deliver within the exception. *Alden* v. *Pearson*, 3 Gray, 342.

Same—Negotiability:—A bill of lading, though not strictly a negotiable instrument, like a bill of exchange, is the representative of the property itself and is the means by which property may be transferred in a manner equivalent to an actual delivery of the property. *Forbes et al.* v. *Boston & Lowell R. R. Co.* 133 Mass. 154.

Same—Not a "negotiable instrument":—A bill of lading is not a negotiable instrument in the original sense of the word, and indorsement and delivery of it for value operates to transfer the title of the goods described in it, but not as an assignment of the contract except by force of some statute. *Cox* v. *Central Vermont R. R.* 170 Mass. 129; *Stollenwerck* v. *Thacher,* 115 Mass. 224; *Finn* v. *Western R. R.,* 112 Mass. 524.

Same—As collateral:—One who holds a bill of lading as collateral security for the payment of a debt has such title in the property represented as to enable him to recover of any one who wrongfully converts it. *Forbes et al.* v. *Boston & Lowell R. R. Co.,* 133 Mass. 154; *Chicago National Bank* v. *Bayley,* 115 Mass. 228; *DeWolf* v. *Gardener,* 12 Cush. 19; *Dows* v. *National Exchange Bank,* 91 U. S. 618.

Same—Same—Fraud on the part of director of bank:—The plaintiff, the owner of sugar, shipped the same to an agent for the purpose of sale. From the bill of lading it appeared that the goods had been shipped subject to the order of the consignee. The consignee pledged the bill of lading with the defendant bank, of which he was a director, as security for a large loan made to him by the bank, he being present at the directors' meeting which authorized the loan. It was shown that the bank acted in entire good faith in the matter. It was attempted, by the plaintiff, to impute the fraud of the consignee to the defendant bank. It was *held* that this could not be done, and judgment was accordingly given for defendant. *Innerarity et al.* v. *Merchants' National Bank,* 139 Mass. 332.

Bill of lading—Exemption in—Burden of proof:—Where there was a stipulation in a bill of lading that notice of loss must be given within thirty days, the court *held* that the burden of proof was on the defendant to show that such stipulation was a just and reasonable one. Carriers may, by stipulation in bills of lading, limit their common-law liability if the effect is not

to relieve them of the consequences of their own negligence, or that of their servants, and the contracts are, in themselves, just and reasonable. *Cox* v. *Central Vermont R. R.*, 170 Mass. 129; *Lewis* v. *Smith*, 107 Mass. 334; *Liverpool & Great Western Steam Co.* v. *Phenix Ins. Co.*, 129 U. S. 397; *Bank of Kentucky* v. *Adams Ex. Co.*, 93 U. S. 174; *Hoadley* v. *Northern Transportation Co.*, 115 Mass. 304.

CHAPTER XXII

MICHIGAN

LAWS PERTAINING TO WAREHOUSEMEN

The Uniform Warehouse Receipts Act is in force in Michigan, except sections 57, 61 and 62 which have been omitted. Ap. 737. Howell's Am. Stats. 1913, Vol II, Ch. 42, p. 1316. Also this volume p. 1.

Who deemed to be a warehouseman:—*The People of the State of Michigan enact:* That every person, firm, company, association, warehouse company or other corporation, lawfully engaged in the business of storing for hire goods, wares, merchandise, grain, flour, provisions, or other products, commodity or personal property, excepting persons or companies engaged in the business of storing grain in elevators, shall be deemed and held to be a warehouseman under this act. Compiled Laws, Mich. 1897, sec. 5030.

Lien for storage charges, etc.:—Every warehouseman shall have a lien on all goods, wares, merchandise and other personal property deposited and stored with him by the owner thereof or by any person with the owner or owners' knowledge or assent, for his storage charges and for all moneys advanced by him for cartage, labor, insurance, weighing, coopering and other necessary expenses to or on such property; and such lien shall extend to and include all legal demands for storage and expenses paid as above which he may have against the owner of said property, and it shall be lawful for him to detain said property until such money is paid. *Id.* sec. 5031 as amended by act March 31, 1909. Pub. Acts, Mich. 1909, ch. 24, sec. 2.

Lien on portion of goods:—Where a quantity of goods, wares, merchandise, or other personal property is stored at one time and as one parcel, and portions of it are from time to time delivered without payment of storage charges, said warehouseman shall have a lien upon the portion left for storage and for

expenses paid as above on the whole. Compiled Laws, Mich. 1897, sec. 5032.

Warehouseman to have a lien on property for advanced charges—When not liable for damage to property:—Wherever, in pursuance of any custom or by request of the owner or consignee, such warehouseman on receiving from a common carrier goods, wares or merchandise, or other personal property in apparent good order, may advance the freight due to said carrier on said property, he shall have a lien on said property for the amount of said freight paid, in addition to his own charges for storage and expenses as above; and if he shall deliver said goods to the owner or consignee without payment, he may afterwards recover of such owner or consignee the amount of said storage paid. And if the property has been injured before coming to the possession of said warehouseman, which injury is not apparent or known to him before or at the time of receiving the property, the owner or consignee must look to the carrier, and cannot recoup his damages in an action by a warehouseman. *Id.* 5033.

Lien on property:—Whenever any warehouseman shall, at the request of the owner of personal property stored with him, and during the time that said property so remains in storage, pay any charges or liens on said property, or loan any money to said owner on said property, and the fact and the amount of said loan shall be specified in or indorsed on the warehouse receipt given for said property, said warehouseman shall have a lien on said property for the amount of said advance or loan and interest, and this lien shall be good as against any assignee of said receipt, and as against every subsequent purchaser or incumbrancer of said property. *Id.* sec. 5034.

Lien shall be paramount to that of a chattel mortgage—Right of mortgagee:—The lien of a warehouseman for customary storage charges, and for necessary expenses paid in reference to the stored property, as above specified shall be paramount to that of a chattel mortgage of the property in all cases where said mortgage shall have been made after said goods shall have been received for storage by said warehouseman. But this shall not deprive the mortgagee of the right which he might otherwise have of taking possession of the goods under his mort-

gage, upon paying the charges up to the date of taking such possession. *Id.* sec. 5035.

Record of property to be kept—Receipt:—Every warehouseman shall keep a record book, in which shall be entered immediately upon its receipt, a description of all property deposited with him for storage, including the brand or distinguishing marks on such property, together with the date of the reception of said property and the name and address of the owner thereof. And every receipt given for any such property shall also contain the same particulars, and shall be evidence in any action against said warehouseman. *Id.* sec. 5036.

Receipts negotiable—Original receipt to be surrendered, when—Proviso as to "non-negotiable receipts":—Warehouse receipts shall be negotiable, and may be transferred by indorsement and delivery thereof, and said indorsement may be either in blank or to the order of another. Such indorsement shall be deemed to be a warranty that the indorser has good title and lawful authority to sell the property named in such receipt subject, however, to the lien of the warehouseman for freight and charges on said property. No property covered by such receipt or voucher shall be delivered by said warehouseman except on the surrender and the cancellation of said original receipt or voucher; or in case of partial sale or release of the said property, by the written assent of the holder of said receipt or voucher indorsed thereon: *Provided*, That all warehouse receipts or vouchers which shall have the words "non-negotiable" plainly written, printed or stamped on the face thereof shall be exempt from the provisions of this section. *Id.* sec. 5037.

Receipt not to be issued for property not actually stored:—No warehouseman shall issue any receipt or voucher for any goods, wares, merchandise or other personal property to any person or persons purporting to be the owner or owners thereof, unless such property shall have been actually received into store or upon the premises of such warehouseman, and shall be in store or on the premises as aforesaid, and under his control, at the time of issuing such receipt or voucher. *Id.* sec. 5038.

Receipt not to be issued as security for money loaned:—No warehouseman shall issue any receipt or voucher for any personal property to any person, persons or corporation as security

for any money loaned or for other indebtedness or indemnity, unless such property so receipted for shall be, at the time of issuing such receipt or voucher, the property, without incumbrance, of said warehouseman, and shall be actually in store and under the control of said warehouseman at the time of giving such receipt or voucher, and if such property be incumbered by prior lien, then the character, extent and amount of that lien shall be fully set forth and explained in the receipt. *Id.* sec. 5039.

Duplicate receipt:—No warehouseman shall issue any second or duplicate receipt for any goods, wares, merchandise or other personal property while any former receipt or voucher for any such property as aforesaid, or any part thereof, shall be outstanding and uncancelled, without writing or stamping in ink across the face of the same "duplicate." *Id.* sec. 5040.

Return of receipt:—No warehouseman shall sell or incumber, ship, transfer, or in any manner remove beyond his immediate control, any goods, wares, merchandise, or other personal property for which a receipt shall have been given by him as aforesaid, whether received for storing, shipping, grinding, manufacturing or other purposes, without the return of such receipt. *Id.* sec. 5041.

Penalty for violation—Right of recovery:—Any warehouseman who shall willfully violate any of the provisions of this act, except as hereinafter provided for in section twenty-seven, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding two thousand dollars in amount or by imprisonment in the state prison or county jail not exceeding two years, or by both such fine and imprisonment in the discretion of the court, and every person or persons aggrieved by the violation of any of the provisions of this act may have and maintain an action at law against the person or persons violating any of said provisions to recover the damages which he or they may have sustained by reason of any such violation as aforesaid before any court of competent jurisdiction, whether such person shall have been convicted of misdemeanor as aforesaid under this act or not. *Id.* sec. 5042 as amended by act March 31, 1909, Pub. Acts, March 1909, ch. 24, sec. 13.

When goods may be sold—Proviso:—Every warehouseman who shall have had in his possession any goods, wares, merchan-

dise or other personal property, by virtue of any agreement or warehouse receipt for the storage of the same, on which, or any part thereof, shall be due one year's storage, may at any time thereafter proceed to sell said property in the manner provided in this act: *Provided, however*, That in case of property received from a common carrier as mentioned in section four of this act, upon which property said warehouseman shall have advanced the freight charges, and said freight charges shall not be repaid within three months, he may proceed to sell said property at any time after said period of three months. Compiled Laws, Mich., 1897, sec. 5043.

Notice of sale of property—How served:—Before any such sale be made, at least thirty days' written or printed notice shall be given to the person or persons in whose name or names such property was stored, notifying him or them of the default in payment of such storage charges or advances, if made on said property, and to pay the arrears or amount due, and in case of default in so doing that such goods, wares, merchandise or other personal property will be sold to pay said charges and advances, at the time and place to be specified in such notice. Such notice may either be served personally upon such person or persons, or sent to him or them by mail, postpaid, addressed to the place of residence given at the time of storing said goods or subsequently in writing to the warehouseman. In the event that the person or persons storing such goods or merchandise shall have parted with the same, and the purchaser shall have notified the warehouseman, with his address, such notice shall be given to such transferee as well as to the person storing the goods. *Id.* sec. 5044.

Notice of sale to be published in newspaper:—Before any such sale shall be made, notice thereof shall also be given by publication once a week for three successive weeks before the time of such sale, in a newspaper published in the county where such sale is to take place. Said notice shall specify the time and place of sale, a description of the property, the name of the owner and also of the transferee, if any. Copies of said notice shall also be posted within said time in four of the most public places in the city, village or township where said sale shall be held. *Id.* sec. 5045.

Time and place of sale—Proceeds of sale:—Such sale shall be by public auction to the highest bidder, and shall be held be-

tween the hours of nine in the forenoon and six in the afternoon, and may be held either at the warehouse or other place of deposit of said property. From the proceeds of sale, said warehouseman may retain his charge for storage of the property and any advances made thereon by him, and interest, and the expenses of advertising and sale. Said property may be sold in bulk or in parcels, according to the discretion of the warehouseman, with the view of obtaining as large a price as possible for the same. *Id.* sec. 5046.

Record of sale to be kept—Surplus of sale to be paid to county treasurer:—Such warehouseman shall make an entry in a book kept for that purpose, of all sales made as aforesaid, and of the surplus of the proceeds of the sale, if any, and such balance or surplus may be paid over to such person or persons entitled thereto, within thirty days after such sale. After the expiration of said thirty days, such balance or surplus, if not called for by the owner, shall be paid by such warehouseman to the county treasurer of the county in which such sale was made and said warehouseman shall at the same time file with said treasurer an affidavit, in which shall be stated the name and place of residence, so far as the same are known, of those persons whose goods or merchandise have been sold, the articles sold and the prices at which they were sold, the name and residence of the auctioneer making the sale, together with a copy of the published notice. *Id.* sec. 5047.

Statement to be filed:—The county treasurer shall make an entry of the amount received by him and the time when received, and shall file in his office such statement so delivered to him by said warehouseman. *Id.* sec. 5048.

When owner may recover:—If the owner of the property sold, or his legal representatives, shall at any time within six years after such money is deposited in the county treasury, furnish satisfactory evidence to the treasurer of the ownership of such property, he shall receive from such treasurer the amount so deposited with him. *Id.* sec. 5049.

Amount to be deposited:—If the amount so deposited with any county treasurer is not claimed by the owner thereof, or his legal representatives, within the said six years, the same shall belong to the county and shall be credited to the general fund thereof. *Id.* sec. 5050.

Perishable property may be sold:—Property of a perishable kind and subject to decay by keeping, consigned or left for storage in the manner before mentioned, if not taken away within thirty days after it is left, may be sold after giving ten days' notice thereof in the manner above provided, but the sale shall be conducted and the proceeds of the same applied in the manner before provided in this act: *Provided, however*, That any property in a state of decay, or that is manifestly liable immediately to become decayed, may be summarily sold without notice. The owner of such property shall be liable to said warehouseman, for any excess of freight and storage charges above the amount realized from the sale of said property. *Id.* sec. 5051.

Warehouseman may replevy goods after delivery:—Any warehouseman who has parted with his possession to stored property, through fraud or mistake, to any person not entitled to the possession of the same, may after demand maintain an action of replevin for the same, or, if the property can not be found, an action of assumpsit or trover against the person converting or removing it. In case of replevin, if there was no fraud in obtaining such possession, the plaintiff shall first tender to the defendant the freight or other proper charges which may have accrued at the time of the demand of possession. *Id.* sec. 5052.

When property is taken by attachment warehouseman to give notice to owner—Notice to be delivered personally or by mail:—Whenever any goods, wares, merchandise or other personal property shall be taken from the possession of any warehouseman, by writ of attachment or replevin, or other legal process, said warehouseman shall at once give written or printed notice thereof to the owner or person named in the warehouse receipt given for said property, or in case said warehouseman shall have received notice of any transfer of said property, and of the name and address of the transferee, he shall also give to said transferee like notice of said suit. Said notice may be delivered personally or sent by registered mail, postpaid. If such notice shall be given as aforesaid, said warehouseman shall not in any way be liable on account of said suit to said owner or transferee of said property, or to the holder of any receipt or voucher given for the same, saving and reserving to such owner or holder the legal remedies for the recovery of

the said goods, wares, merchandise and other personal property from any person unlawfully detaining the same, or for damages against any person unlawfully taking the same. *Id.* sec. 5053.

Warehouseman not to be responsible for damages caused by fire:—No warehouseman shall be held responsible for any loss or damage to property by fire while in his custody, provided reasonable care and vigilance be exercised to protect and preserve the same. *Id.* sec. 5054.

When owner, mortgagee, etc., may examine property:—All persons owning property or who may be interested in the same by way of chattel mortgage, contract of sale, or where property has been sold on lease, when stored in any public warehouse, at all times during ordinary business hours, shall, on production of either the warehouse receipt, chattel mortgage, contract of sale, lease, or any other written instrument showing that said person is interested in said property so stored, be at full liberty to examine such property, and all proper facilities shall be extended to such person by the warehouseman, his agents and employes for such examination. *Id.* sec. 5055 as amended by act March 31, 1909. Pub. Acts March 1909, ch. 24, sec. 26.

Refusal, when a misdemeanor—Per diem penalty:—Any warehouseman who shall refuse any person the right to examine property stored in his warehouse and who shall not extend to such person or persons proper facilities for so doing, either by himself, his agents or employes, when such person or persons have a lawful right by the terms of section twenty-six of this act so to do, shall be deemed guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction shall be punished by a fine of not exceeding twenty-five dollars in amount or by imprisonment in the county jail not exceeding ninety days, or by both such fine and imprisonment in the discretion of the court; and every day said warehouseman shall so refuse shall be deemed a distinct and separate offense and shall subject said warehousman to the penalty herein provided for. Pub. Acts Mich. 1909, ch. 24, sec. 27.

Warehouse companies—Authority to incorporate:—*The people of the state of Michigan enact:* That any five or more persons, residents of this state, may associate themselves together

as a body corporate, for the purpose of constructing, owning and controlling warehouses for the storage of grain and other commodities. Compiled Laws Mich., 1897, sec. 6886.

Conditions—Affidavits required:—Such persons shall, under their hands and seals, make and subscribe to a certificate, which shall specify: First, the name and business of said association; second, the amount of the capital stock thereof, and the amount of cash capital actually paid in; third, the number of shares into which said capital stock shall be divided, and it is hereby provided that such shares shall not be less than twenty-five dollars each; fourth, the names of the stockholders, their respective residences, and the numbers of shares held by each person; fifth, the amount of all property, real and personal, that may be held by such corporation; sixth, the term of the existence of said corporation, not to exceed thirty years;

Which certificate shall be verified by the affidavits of the persons subscribing the same, and be acknowledged before some officer authorized to take the acknowledgment of deeds, and shall be recorded in the office of the secretary of state, and in the office of the clerk of the county in which such corporation is located. *Id.* sec. 6887.

Body corporate—Powers, etc.—Limit of property—Proviso:—Upon compliance by such persons with the provisions of the preceding section, such association shall be and is hereby declared a body corporate, empowered to hold and possess so much real and personal estate that may be purchased by it, or that may be given, granted, or devised to it as a corporation, in accordance with the provisions of law at the time such gift, grant or devise shall take effect, as may be necessary for the use and occupation of said corporation for the purposes of its business, not to exceed (exceeding) in value two million dollars: *Provided*, That all the property of such corporation shall be subject to taxation, and shall be used for no other purpose than the legitimate business of said corporation as hereinafter stated. *Id.* sec. 6888.

Right to build, and receive grain, etc., on storage:—Any corporation formed under the provisions of this act, is hereby authorized to erect a warehouse or warehouses, on any portion of the real estate that may be owned or acquired by it in ac-

cordance with the preceding section, and to receive for storage therein grain and other commodities, to fix the price for such storage, and to make all necessary rules and regulations for the management of its said business. *Id.* sec. 6889.

Manner of calling the first meeting—Election of officers—Proviso:—When any corporation shall be formed under this act, any three of those associated may call the first meeting of the corporation, at such time and place as they may appoint, by giving notice thereof, by publishing the same two or more times in some newspaper printed in the county in which the place of business of said corporation is located, at least fifteen days before the time appointed for such meeting; at which meeting, or at any adjourned meeting thereof, the stockholders of said corporation may elect such officers of said corporation as they shall deem necessary for the proper management of the property and business of said corporation, and may also make all necessary by-laws and regulations for the proper management of their affairs: *Provided*, That said by-laws and regulations shall be in conformity with the provisions of chapter seventy-three of the compiled laws relative to corporations. *Id.* sec. 6890.

Other provisions:—All corporations formed under this act shall be subject to the general provisions of chapter seventy-three of the compiled laws, in all matters not herein enumerated and specified, so far as the same may be applicable thereto. *Id.* sec. 6891.

Disposition of unclaimed property—Description and date of reception of property to be entered in certain cases:—Whenever any personal property shall be consigned to, or deposited with any forwarding merchant, wharf keeper, warehouse-keeper, tavern keeper, or the keeper of any depot for the reception and storage of trunks, baggage, and other personal property, such consignee or bailee shall immediately cause to be entered in a book to be provided and kept by him for that purpose, a description of such property, with the date of the reception thereof. *Id.* sec. 5727.

When notice to be given to owner by letter:—If such property shall not have been left with such consigne or bailee for the purpose of being forwarded or otherwise disposed of according to directions received by such consignee or bailee, at or be-

fore the time of the reception thereof, and the name and residence of the owner of such property be known or ascertained, the person having such property in his custody shall immediately notify such owner by letter, to be directed to him, and deposited in a post-office, to be transmitted by mail, of the reception of such property. *Id.* sec. 5728.

Notice when and how to be published:—In case any such property shall remain unclaimed for three months after its reception as aforesaid, the person having possession thereof shall cause a notice to be published once in each week for four successive weeks in a newspaper published in the same county, if there be one, and if not, then in some paper published at the seat of government, describing such property, and specifying the time when it was so received, and stating that unless such property shall be claimed within three months from the first publication of such notice, and the lawful charges thereon paid, the same will be sold according to the statute in such case made and provided. *Id.* sec. 5729.

Proceedings if the property remain unclaimed:—In case the owner or person entitled to such property shall not, within three months after the first publication of such notice, claim such property and pay the lawful charges thereon, including the expense of such publication, the person having possession of the property, his agent or attorney, may make and deliver to any justice of the peace of the same county, an affidavit, setting forth a description of the property remaining unclaimed, the time of its reception, the publication of the notice, and whether the owner of such property be known or unknown. *Id.* sec. 5730.

Inventory and order for sale when to be made by justice:—Upon the delivery to him of such affidavit, the justice shall cause such property to be opened and examined in his presence, and a true inventory thereof to be made, and shall make and annex to such inventory an order under his hand, that the property therein described be sold by any constable of the city or township where the same shall be, at public auction, upon due notice. *Id.* sec. 5731.

Constable to give notice and sell property:—It shall be the duty of the constable receiving such inventory and order, to give ten days' notice of the sale, by posting up written notices thereof in three public places in the city or township, and to sell such

property at public auction for the highest price he can obtain therefor. *Id.* sec. 5732.

Return of constable:—Upon completing the sale, the constable making the same shall indorse upon the order aforesaid a return of his proceedings upon such order, and deliver the same to such justice, together with the inventory, and the proceeds of the sale, after deducting his fees, which shall be the same as upon an execution. *Id.* sec. 5733.

Disposition of proceeds, etc.:—From the proceeds of such sale, the justice shall pay the charges and expenses legally incurred in respect to such property, or a ratable proportion to each claimant, if there be not sufficient for the payment of the whole; and such justice shall ascertain and determine the amount of such charges in a summary manner, and shall be entitled to one dollar for each day's services rendered by him in such proceedings. *Id.* sec. 5734.

Inventory, etc., to be delivered to county treasurer:—Such justice shall deliver to the treasurer of the county in which the property was sold, the affidavit, inventory and order of sale, and return herein before mentioned, together with a statement of the charges and expenses incurred in respect to such property, as ascertained and paid by him, with a statement of his own fees, and shall at the same time pay over to such treasurer any balance of the proceeds of the sale, remaining after payment of such charges, expenses and fees. *Id.* sec. 5735.

Entry, etc., to be made by treasurer:—The treasurer shall file in his office, and safely keep all the papers so delivered to him, and make a proper entry of the payment to him of any moneys arising from such sale, in the books of his office. *Id.* sec. 5736.

When owner may receive amount deposited with treasurer:—If the owner of the property sold, or his legal representatives shall, at any time within five years after such moneys shall be deposited in the county treasury, furnish satisfactory evidence to the treasurer of the ownership of such property, he or they shall be entitled to receive from such treasurer the amount so deposited with him. *Id.* sec. 5737.

If amount not paid to owner, to be paid into state treasury:—If the amount so deposited with any county treasurer shall

not be paid to such owner or his legal representatives within the said five years, such county treasurer shall pay such amount into the state treasury, to the credit of the general fund. *Id.* sec. 5738.

Owners, etc., of factories, warehouses, etc., to provide fire escapes:—It shall be the duty of the owner, proprietor, or lessee of any building, factory, mill, warehouse, or workshop, more than two stories in height, where male or female help is employed above the second story in such building, to provide suitable ladders, or such other fire escapes as may be deemed necessary, for the escape of such help or other persons occupying such building, in cases of fire, as provided in section four of this act. *Id.* sec. 5534.

Shops, etc., not to be kept open on the first day of the week, etc.:—No person shall keep open his shop, warehouse, or workhouse, or shall do any manner of labor, business, or work, or be present at any dancing, or at any public diversion, show, or entertainment, or take any part in any sport, game, or play on the first day of the week. The foregoing provisions shall not apply to works of necessity and charity, nor to the making of mutual promises of marriage, nor to the solemnization of marriages. And every person so offending shall be punished by fine not exceeding ten dollars for each offence. *Id.* sec. 5912.

Embezzlement of goods, etc., which may be the subject of larceny—Deemed larceny:—If any person to whom any money, goods, or other property which may be the subject of larceny, shall have been delivered, shall embezzle or fraudulently convert to his own use, or shall secrete with the intent to embezzle, or fraudulently use such goods, money, or other property, or any part thereof, he shall be deemed by so doing to have committed the crime of larceny. *Id.* sec. 11570.

Above statute construed—Existence of lien, will not justify conversion—Hotel keeper—Actual conversion and intention essential:—The fact that one was a guest at a hotel and that the proprietor thereof would have a lien upon the baggage of his guest for the amount of charges of the proprietor for board gives to the latter no authority to dispose of the property as his own. The contention that the hotel keeper had a lien on the baggage and that therefore he could not be guilty of larceny in relation

thereto cannot be sustained under the above statute. An instruction to the jury to the following effect *held* to be correct, that in order to find a conversion they must find an actual conversion by the proprietor to his own use and also an intent existing at the time of such act of conversion, to deprive the owner of his property therein and to use it himself; further, that if the proprietor acting under the belief that he had a lien on the goods for his charges and that therefore he had a right to dispose of the same and did so under this belief that this action on the part of the proprietor would negative an intent to deprive the owner of his goods. *People* v. *Husband,* 36 Mich. 306.

Penalty for making fraudulent warehouse receipts:—If any warehouseman or forwarding merchant or any other person, or the agent or clerk of any warehouseman or forwarding merchant or other person, shall knowingly execute and deliver to any person a receipt or certificate purporting to be for flour, wheat, pot or pearl ashes, or any grain, produce or thing of value, as being at the time of executing and delivering such receipt in possession of such warehouseman or forwarding merchant, or other person, or in store for the person or persons, copartnership, or firm named in any such receipt or certificate, without being at the time of executing and delivering such receipt in the actual possession of such flour, wheat, pot or pearl ashes, or any grain, produce, or thing of value, as expressed in such certificate or receipt, such warehouseman, forwarding merchant, or other person, agent or clerk so executing and delivering any such receipt or certificate shall be deemed guilty of a felony, and on conviction thereof shall be punished by a fine not exceeding two thousand dollars, or imprisonment in the state prison not exceeding three years, or by both such fine and imprisonment, in the discretion of the court; and sending or forwarding to a person who shall be duly entitled or authorized to receive the same, by the public mails, or through the government post-office, or by the hands of any person or persons, any such receipt or certificate as aforesaid, shall be deemed to be a good and lawful delivery thereof, within the meaning of this section. Compiled Laws, Mich. 1897, sec. 11571.

Fraudulent disposition of property by agents, etc.:—Whenever money, or any goods, wares or merchandise or other personal

property, shall be delivered, committed or intrusted to, or put in charge of, any person or persons as agent or agents with written instruction, or upon any written agreeemnt signed by the party so instructed as agent, or such written instructions shall be delivered, or such written agreement shall be made, at any time after delivery to such agent or agents, of any money or goods, wares, merchandise, or other personal property, which instructions or agreements shall express the appropriation, purpose or use to which such money shall be applied, or the terms, mode or manner of the application or employment of such money, or which shall express or direct the disposition or use to be made by such agent, of any goods, wares, merchandise, or other personal property, so delivered or intrusted to such agent; if the person or persons to whom any such money or goods, wares or merchandise or other personal property shall be so delivered, committed or intrusted, shall purposely and intentionally apply, appropriate, dispose of, or use any such money or goods, wares, merchandisė or other personal property in any other way or manner, or for any other purpose, use or intent, than such as shall be expressed in such written instrument or agreement touching the same, the person or persons so doing, shall be deemed guilty of felony, and on conviction thereof before a competent tribunal, shall be subject to a fine not exceeding two thousand dollars, or imprisonment in the state prison for a term not exceeding three years, or by both such fine and imprisonment, in the discretion of the court. *Id.* sec. 11572.

Penalty for embezzlement of property receipted for:—If any warehouseman or forwarder, or other person who shall have issued a receipt or certificate for property, as recited in the thirty-fifth section of this chapter, or shall receive property on deposit or for sale on a specific contract or understanding, and shall, after issuing said receipt or certificate, or receiving such property, embezzle, dispose of, or convert to his own use, such property or the moneys received on the sale of such property, contrary to such receipt or certificate, or to the previous contract or understanding, he shall be deemed guilty of a felony and on conviction thereof shall be punished by imprisonment in the state prison not more than five years, or by a fine not exceeding five thousand dollars, or by imprisonment in the county jail not more than one year. *Id.* sec. 11573.

Who may issue warehouse certificates—What to contain:—All persons, firms or corporations owning or dealing in flour, grains, beans, seeds or other farm products, or engaged in the business of slaughtering cattle, sheep or hogs, and dealing in the various products therefrom, or buying or selling sugar, butter, eggs, cheese, dressed poultry or any other merchandise, who own or control the structures wherein any such business is conducted, or such commodities stored, may issue elevator or warehouse certificates or receipts for any such commodities actually on hand and in store, the property of such person, firm or corporation, and may, by the issue of such certificates, sell, sign, encumber or pledge such commodities. Such certificate or receipt shall contain the date of its issue, the name and address of the person, firm or corporation issuing the same, and the name and address of the party to whom issued, the location of the elevator, warehouse or structure wherein the commodity therein described is stored, the quantity of each commodity mentioned therein, the brands or marks of identification thereon, if any, and shall be signed by the person, firm or corporation issuing the same. Pub. Acts Mich. 1905, ch. 147, sec. 1.

Declaration to be first filed with register of deeds—What to state:—Before any such person, firm or corporation, except as hereinafter provided, shall be authorized to issue such elevator or warehouse certificates or receipts, he or it, as the case may be, shall file in the office of the register of deeds of the county wherein such elevator, warehouse or other structure is situated, a written declaration which shall contain the name and place of residence or location of such person, firm or corporation, shall state that he or it designs keeping or controlling an elevator, warehouse or other structure for the storage and sale of commodities mentioned in the preceding section, and shall contain an accurate description of such elevator, warehouse or other structure, the location thereof, and the name or names of any person, other than the one making such declaration, who has any ownership interest in such elevator, warehouse or structure, or in the land upon which it is situated. Such declaration shall be signed and ackowledged by the party making the same, before some officer authorized to take acknowledgments of deeds for said county. *Id.* ch. 147, sec. 2.

Statement to appear on back of certificate—Certificate to be transferable:—Each certificate or receipt issued by any such person, firm or corporation, under the provisions of this act, shall have printed on the back thereof, a statement that the party issuing the same has complied with the requirements of section two of this act, giving the book, page and name of the county where the record of such declaration may be found. When such certificate or receipt is so issued and delivered, it shall have the effect of transferring to the holder thereof the title to the commodities therein described or enumerated, and shall thereafter be assignable and transferable by delivery, and such delivery shall transfer to any bona fide holder, in due course, the title to the commodities therein described and enumerated, against all persons claiming title subsequent to the issuing and delivery of such certificate or receipt. *Id.* ch. 147, sec. 3.

Certificates to be registered by issuing party—What to show—Open to inspection:—All certificates or receipts given under the provisions of this chapter, shall be registered by the party issuing them in a book kept for that purpose, showing the date thereof, the number of each, the name of the party to whom issued, the quantities and kinds of commodities enumerated therein, and the brands or other distinguishing marks thereon, if any, which book shall be open to the inspection of any person holding any of the certificates or receipts that may be outstanding and in force, or his agent or attorney, and when any commodity enumerated in any such certificate is delivered to the holder thereof, or it in any other manner becomes inoperative, the fact and date of such delivery or other termination of such liability shall be entered in such register, in connection with the original entry of the issuance thereof. *Id.* ch. 147, sec. 4.

When unlawful to issue certificate:—No person, firm or corporation, shall issue any elevator or warehouse certificates or receipts for any of the commodities mentioned in this chapter, unless such property is actually in the elevator or warehouse, or structure mentioned therein as the place where such commodity is stored, and it shall remain there until otherwise ordered by the lawful holder of such certificate or receipt, subject only to the lien of the warehouseman thereon and his right to

enforce the same. No second certificate or receipt shall be issued for the same property, or any part thereof, while any other or prior certificate is outstanding and in force, nor shall any such commodities be sold, encumbered, transferred or removed from such elevator, warehouse or other structure wherein the same was stored at the time such certificate or receipt was issued by the warehouseman or any agent or employe thereof, without the written consent of the holder thereof endorsed thereon. *Id.* ch. 147, sec. 5.

Recover damages:—Any one injured by the violation of any of the provisions of this chapter, may recover his actual damages sustained on account thereof. *Id.* ch. 147, sec. 6.

Misdemeanor, what deemed—Penalty:—Any person who shall willfully alter or destroy any register or certificate or receipt provided for in this chapter or issue any receipt or certificate without entering or preserving in such book the registered memorandum; or who shall knowingly issue any certificate or receipt therein provided for when the commodity or commodities therein enumerated are not in fact in the building or buildings it is certified they are in, or shall, with intent to defraud, issue a second or other certificate for any such commodity for which, or for any part of which, a former valid certificate or receipt is outstanding and in force; or shall while any valid certificate or receipt for any part of the commodities mentioned in this chapter is outstanding and in force, sell, encumber, ship, transfer or remove from the elevator warehouse or building where the same is stored, any such certified property, or knowingly permits the same to be done, without the written consent of the holder of such certificate or receipt, or if any person knowingly receives any such property or helps to remove the same, he shall, upon conviction, be punished by fine not exceeding ten thousand dollars, or by imprisonment in the state prison not exceeding five years. *Id.* ch. 147, sec. 7.

Not prohibiting mingling in common bins—Proviso:—Nothing in this act shall be construed as prohibiting or preventing warehousemen from mingling in common bins, grains or beans or seeds of the same grade, issuing certificates or receipts therefor, and drawing out and shipping said grain, beans or seeds from said bins: *Provided*, That a sufficient quantity of

such grain or seeds shall be retained and kept in said bins to represent and satisfy all outstanding receipts or certificates. *Id.* ch. 147, sec. 8.

Act not to affect existing laws, etc.:—Nothing in this act shall be construed to affect, interfere with or impair any rights of issuing and negotiation of any warehouse receipts or certificates under any existing law, or under any regulations of any chamber of commerce or board of trade within this state. *Id.* ch. 147, sec. 9, approved June 1, 1905.

DECISIONS AFFECTING WAREHOUSEMEN

B.

Bailment and sale—Facts constituting bailment—Trover—Evidence as to usage:—An action of trover was brought against the defendant, a warehouseman, for the recovery of the value of certain wheat stored with him. The defendant had delivered to the plaintiff a large quantity of wheat and this action was brought for the recovery of a quantity still due the plaintiff, which allegation was denied by the defendant. Evidence was received of the usage whereby wheat so stored on similar receipts, was mixed with other wheat of like kind and quality and that a delivery of the same wheat is never expected, but only of a similar wheat of the same quality. In the lower court, upon the above state of facts, judgment was rendered for the defendant on the ground that the plaintiff should have sought his remedy in *assumpsit*, and not in trover, the transaction not creating a bailment but amounting to a sale. It was *held*, on appeal, that the question of the admissibility of the evidence showing the usage as to the mixture of grain was a very doubtful one, but granting that such usage was known to the parties and was incorporated in their agreement, that the transaction nevertheless constituted a bailment and not a sale. *Erwin* v. *Clark*, 13 Mich. 10.

Same—Same—Intention of parties in receipt construed—Usage:—The plaintiff delivered wheat to the defendants, merchant millers, and received a receipt therefor in the following terms:

"No. 96 820 bus. Crescent Mills.

"GRAND RAPIDS, MICH., March 26, 1878.

"Received of William B. Ledyard by L. Byrne, 820 bushels number One wheat at owner's risk from elements, at 10 cents less Detroit quotations for same grade when sold to us. Stored for ——— days.

"HIBBARD & GRAFF."

The wheat was all stored, with plaintiff's knowledge, in bins from which the defendants drew from day to day for purposes of their business and manufacture. No storage was ever charged and the dealings between the parties remained entirely unsettled and open until the failure of the defendants. Plaintiff then demanded his wheat and failing to obtain the same brought an action of replevin for the recovery thereof. The defendants undertook to show that the plaintiff demanded not the wheat but the price thereof, but on this point the jury decided against them. It was contended on behalf of the plaintiff that the transaction was a bailment and that it was at the option of the plaintiff to take the value at ten cents less than the Detroit quotations or to receive back the wheat or an equal amount of the same kind and quantity. It was *held* that the relation of the parties was to be determined from the receipt and that as long as the wheat was held by the defendants at the risk of the plaintiff it was a bailment and not a sale. That the plaintiff could have converted the bailment into a sale by notifying the defendants of his election to receive the price fixed according to the terms of the contract. Further, that if the receipts were issued by the defendants as warehousemen they stood for the goods for which they had been issued and the fair presumption was that the grain, or its equal in kind and quantity, was to be kept in the warehouse to meet the receipt on presentation, and that this presumption could only be overcome by some act unequivocal in its nature. Further, that usage can never vary the written stipulations of parties, though it may aid in the explanation of their terms and perhaps add incidents in respect to which they are silent. *Ledyard* v. *Hibbard et al.*, 48 Mich. 421.

Conversion—Action for—Statute of Limitations:—Plaintiff stored certain wheat with defendant and obtained a receipt therefor. About eighteen years thereafter plaintiff sued for the value of the wheat. Meanwhile the warehouseman had gone out of

business. *Held:* Where a demand is necessary to maintain a cause of action, such demand must be made within a reasonable time, which by analogy to the statute of limitations will be deemed to be six years. *Freeman* v. *Ingerson*, 143 Mich. 7.

H.

Lien for charges—By statute extends to all valid claims for storage, etc., against the owner:—Under sec. 2, chap. 127, Laws of 1897, (2 Comp. Laws, sec. 5031), it was *held* that a warehouseman has a valid lien for all claims which he may have against the *owner* of property deposited with him for storage charges and for all moneys advanced by him for cartage, labor, insurance, weighing, coopering and other necessary expenses to or on such property. That, therefore, where goods had been removed from the warehouse and were afterward again deposited on storage, the lien for former storage charges would attach and that the warehouseman could hold such goods for storage charges and for other advances and charges mentioned in the statute. *Kaufman* v. *Leonard*, 139 Mich., 104; following *Stillman* v. *Kimberly*, 121 N. Y. 393, aff'd 53 Hun., 531.

M.

Pledge—Warehouse receipt—Issued against warehouseman's own goods:—The defendant warehouseman issued to the plaintiff national bank as security for the payment of a note, a warehouse receipt for a large quantity of wheat. In this receipt it was stated that the defendant held to the account of the plaintiff wheat represented thereby, to be delivered in the wheat or its equivalent in flour upon the return of the receipt properly indorsed. It further appeared that at the date of this transaction the defendants were not only buying, selling, storing in their factory and shipping wheat on their own account, but were also receiving into their mills wheat to be stored for others for which they issued the customary warehouse receipt. The court instructed the jury that the receipt issued by the defendant to the plaintiff constituted a valid pledge in the nature of a mortgage of the property described therein as security for the note to which it referred. Under these facts the jury found that the defendants were the general owners of the wheat replevied and that the plaintiff had a special property therein to the amount of the unpaid loan. It was *held* on appeal that this instruction

was correct, that the contention made in behalf of the defendants that there was not a valid pledge made of the wheat on the ground that the plaintiff never had possession thereof, which was essential to a pledge, could not be sustained; that the warehouse receipt passed the title to the wheat represented thereby and that there was a valid pledge thereof. The court further *held* that the mere fact that the receipt in question mentioned both number one and number two wheat did not constitute an indefiniteness which would vitiate the pledge although the quantity of each kind of wheat was not mentioned in the receipt. And that in the absence of any specification of the quantity of each kind that was to be held, the legal construction would entitle the pledgee to an equal amount of each kind if it remained unmanufactured. *Merchants' & Mfgrs.' Bank of Detroit* v. *Hibbard et al.*, 48 Mich. 118.

N.

Negligence—Improper temperature—Exposure to other goods: —Defendant received a quantity of butter for storage under a contract exempting him from liability for damage from fire, water and other causes. In an action for damage to the property caused by too high a temperature, or by odor from stored fruit, it was *held* there was nothing in the receipt or conditions which relieved defendant from using due care and diligence in maintaining the proper temperature and in not exposing the property to the odor from fruits and vegetables; that defendant was under obligation to preserve proper temperature and keep the property away from injurious odors. *Rudell* v. *Grand Rapids Cold Storage Co.*, 136 Mich. 528.

Same—Remote cause of loss—Warehouseman not liable:— Plaintiff shipped certain oats to defendant to be clipped and reshipped. While in the elevator and before clipping they were accidentally destroyed by fire. *Held:* That defendant's neglect to clip and ship the oats was at most a remote cause, while the accidental fire was the proximate cause of the loss, and that the law does not look beyond the proximate cause. Judgment for plaintiff reversed. *McLane, Swift, & Co.* v. *Botsford Elevator Co.*, 136 Mich., 664.

Same—Warehouseman liable for loss if property is placed in different building:—Defendant warehouseman contracted to store plaintiff's goods in a certain building. Instead, he placed

them in an adjoining building where they were accidentally and without defendant's negligence, destroyed by fire. *Held*, that defendant was guilty of a technical conversion and was liable for the value of the goods. *Hudson* v. *Columbian Transfer Co.*, 137 Mich., 255.

O.

Warehouse Receipt—Delivery of, passes title to goods:—Form of warehouse receipt considered and *held* that a delivery thereof transfers title to the property described. *Kessler & Co.* v. *Veio*, 142 Mich. 471; *Kessler & Co.*, v. *Zacharias*, 145 Mich. 698.

Elevator receipts—Valid tender by:—An offer to deliver grain represented by elevator receipts, where title is in such receipts, *held* to be valid tender and that the delivery of such receipts would be a delivery of the grain represented thereby. *Gregory et al.* v. *Wendell et al.*, 40 Mich. 432.

R.

Bill of lading—Indorsement—Effect of:—Indorsement of a bill of lading is no more than an assignment of the shipper's obligation, and of the property called for by the bill. It involves no promise on the part of the indorser to do anything towards forwarding the property to its destination. *Maybee & Hasley* v. *Tregent*, 47 Mich. 495.

CHAPTER XXIII

MINNESOTA

LAWS PERTAINING TO WAREHOUSEMEN

The Uniform Warehouse Receipts Act is in force in Minnesota. It took effect January 1, 1914. See Ch. 161, General Laws Minn., 1913, p. 198; also this volume p. 1.

Election, etc.:—The general supervision of railroads and express companies doing business as common carriers, and of public warehouses, is vested in a board of three railroad and warehouse commissioners, which shall be known as the "Railroad and Warehouse Commission." Such commissioners shall be elected at the general election, and shall hold office for four years, and until their successors qualify. Minn. Rev. Laws, 1905, sec. 1953.

Vacancies:—Vacancies in the commission shall be filled by the governor until the next general election, when a commissioner shall be elected for the unexpired term. *Id.* sec. 1954.

Qualifications:—No person in the employ of any railroad company or grain warehouse company, or who owns stocks, bonds, or other property therein, shall be eligible as a commissioner; nor shall any such commissioner, during his continuance in office, be interested in any such stock, bonds, or other property, or in any contract for the construction, repair or maintenance of any railroad, or accept any employment, office, or retainer under any such company, or participate in any hearing or proceeding in which he has a pecuniary interest. *Id.* sec. 1955.

Oath—Bond—Salary:—Before entering upon the duties of his office, each commissioner shall take, subscribe, and file with the secretary of state an oath as follows: "I do solemnly swear that I will support the constitution of the United States and the constitution of this state, and that I will faithfully discharge my duties as a member of the railroad and warehouse com-

mission of the state of Minnesota, according to the best of my ability; and that I am not in the employ of, or holding any official relation to, any common carrier or grain warehouseman, nor am I in any manner interested in any stock, bonds, or other property of any such common carrier or warehouseman." He shall also give a bond to the state, to be approved by the governor, in the sum of twenty thousand dollars, conditioned for the faithful performance of his official duties. His salary shall be three thousand dollars per annum, payable in the same manner as that of other state officers. *Id.* sec. 1956. By act approved April 18, 1905, the annual salary of the commissioners was made thirty-six hundred dollars (Sess. Laws, 1905, C. 240, Sec. 1).

Removal:—Any such commissioner may be removed by the governor for inefficiency, neglect of duty, or malfeasance in office; but before removal he shall be furnished with a copy of the charges against him, and have an opportunity to be heard in defence. Minn. Rev. Laws, 1905, sec. 1957.

Quorum:—A majority of the commission shall constitute a quorum, and the act or decision of a majority shall be deemed the act or decision of the commission. No vacancy in the commission shall impair the authority of the remaining members to exercise all the powers of the commission. Id. sec. 1958.

Secretary — Employees — Standing appropriation: — The commission shall appoint a secretary, not a member, who shall also act as registrar and who shall receive an annual salary of eighteen hundred dollars, payable in the same manner as that of state officers. He shall take, subscribe and file an oath similar to that required of the commissioners, and a like bond, in the sum of ten thousand dollars. The commission shall have authority to employ such additional help as may be necessary to carry out the provisions of this chapter, and fix their compensation. All expenses of the commission and its employees, including all necessary expenses for transportation incurred by the commissioners or their employees, under their order, in making any investigation or performing any other duties in any places except St. Paul, shall be allowed and paid by the state on presentation of itemized vouchers therefor approved by the chairman of the commission and the state auditor, and there is hereby annually appropriated for the use and purposes of the commis-

sion, twenty thousand dollars, or so much thereof as may be necessary. *Id.* sec. 1959.

Attorneys:—The attorney general shall be ex officio attorney for the commission. He shall institute and prosecute all actions which the commission shall order brought, and shall render the commissioners all advice, counsel and assistance necessary for the proper performance of their duties. The county attorney of any county in which an action is pending, prosecuted, or defended by the direction of the commision shall aid in the prosecution or defense thereof until final determination, when requested by the commission. When necessary, the commission may employ additional counsel to assist the attorney general. *Id.* sec. 1960.

Procedure and office:—The commission shall have an official seal, may from time to time make or amend general rules or orders requisite for the order and regulation of proceedings before it, including forms of notices and service thereof, which shall conform as nearly as may be to those in use in the courts, and shall conduct its proceedings in such a manner as will best conduce to the proper dispatch of business and to the ends of justice. Every vote and official act of the commission shall be entered of record, and in its discretion, or upon request of any party interested, its proceedings shall be public. The principal office of the commission shall be in the city of St. Paul, but it may hold sessions elsewhere for the convenience of parties or the public, or to prevent delay or save expense. It may, by one or more of the commissioners, prosecute any inquiry necessary to its duties in any part of the state. *Id.* sec. 1961.

Duties:—The commission shall inquire into the management of the business of all carriers and warehousemen subject to their supervision, and shall keep itself informed as to the manner in which the same is conducted, and shall obtain from such carriers and warehousemen all information necessary for the performance of its duties. One of their number shall visit the stations on the lines of each railroad as often as practicable, giving twenty days' notice in the local newspapers of the time and place of each visit, and personally inquire into the management of such railroad business, and at least once each year shall visit every county having a railroad station, and inquire into the management of such railroad business. For this purpose all

common carriers and their officers and employees are required to furnish such commissioner with reasonable and proper facilities. Each commissioner, in his official capacity, shall pass free on all railroad trains, and at all suitable times may enter and remain in the cars, offices or depots of any railroad company; and whenever, in the judgment of the commission, any common carrier fails in any respect to comply with the law, or any repairs are necessary upon its railroad, or any reasonable addition to or change of its stations, station houses, or transfer facilties, or change in the mode of operating its road or conducting its business, will promote the security or convenience of the public, the commission, by a written order, to be served as a summons in civil actions, shall require compliance with such law, or the making of such repairs, additions, or change. In case of disobedience of said order the commission may cause an action to be commenced for the enforcement thereof. *Id.* Sec. 1962.

Proceedings before commission—How commenced:—Proceedings before the commission against any such carrier or public warehouseman shall be instituted by complaint, verified as a pleading in a civil action, stating in ordinary language the facts constituting the alleged omission or offence. The parties to such proceeding shall be termed, respectively, "complainant" and "respondent." *Id.* Sec. 1963.

Notice to respondent:—Upon filing such complaint, if there appear reasonable grounds for investigating such matter, the commission shall issue an order directed to such carrier or warehouseman, requiring him to grant the relief demanded, or show cause by answer within twenty days from the service of such notice why such relief should not be granted. Such order, together with a copy of the complaint, shall forthwith be served upon the respondent. *Id.* Sec. 1964.

Answer:—The respondent may file and serve by mail upon the complainant, within twenty days after service of the order, an answer alleging that it has already granted the relief demanded, or setting up any matter of defence. If the answer allege the granting of the relief, the complainant shall within twenty days reply, admitting or denying such allegation. If he fails to reply, or admits the allegation, the proceeding shall be dismissed. *Id.* Sec. 1965.

Hearing:—If the matter be not adjusted to the satisfaction of the commission, it shall set a time and place of hearing, and give at least ten days' notice thereof to each party. The parties may appear either in person or by attorney. The commission shall hear evidence and otherwise investigate the matter, and shall make findings of fact upon all matters involved, and such order or recommendation in the premises as may be just. A copy of such findings and order or recommendation shall forthwith be served upon each party. No proceeding shall be dismissed on account of want of pecuniary interest in the complaint. In all proceedings, excepting where the reasonableness of rates are under consideration, hearings may be had before one commissioner, who shall decide the matter in controversy and make a report of his decision to the commission. Upon the approval of such report, it shall become the decision of the commission. *Id.* Sec. 1966 as amended by Laws, 1907, c. 305, Sec. 1.

Notices and orders—Service:—All notices and orders in proceedings before the commission shall be signed by the secretary. Service may be made of all notices, orders, and other papers provided for in this chapter by mail upon any person or firm, or upon the president, general manager, or other proper executive officer of any corporation interested. If any party has appeared by attorney, such service shall be made upon such attorney. Minn. Rev. Laws, 1905, Sec. 1967.

Witnesses:—The commission in any hearing or investigation may require the attendance of witnesses and the production of any books, papers, and records. Witnesses shall receive the same fees and mileage as in civil actions. Disobedience of any subpoena in such proceeding, or contumacy of a witness, may, upon application of the commission, be punished by any district court in the same manner as if the proceeding were pending in such court. *Id.* Sec. 1968.

Complaint that rate is unreasonable—Duty of commission: Upon the verified complaint of any person or of any corporation, private or municipal, that any tariff of rates, fares or charges, or any part thereof, or of any classification is unequal or unreasonable, the commission shall proceed to investigate the matters alleged in such complaint, and for the purposes of such investigation they may require the attendance of witnesses and

the production of books, papers and documents. If, upon the hearing, such tariff rates, fares, or charges, or any part thereof, or of such classification, is found to be unequal or unreasonable, the commission shall make an order stating wherein the same are so unequal or unreasonable, and shall make a tariff of rates, fares, charges and classification which shall be substituted for the tariff so complained of. The tariff so made by the commission shall be deemed prima facie reasonable in all courts and shall be in full force during the pendency of any appeal or other proceedings to review the action of the commission in establishing the same. *Id.* Sec. 1969.

Investigation without complaint:—The commission shall also of its own motion investigate any matter relating to the management by any such carrier or warehouseman of its business or the reasonableness of any rates, fares, charges, or classifications, whenever, in its judgment, the public interests require it, and in such case the procedure shall be, as nearly as may be, as provided upon the filing of a complaint, and the findings and order in such case shall have the same effect as those made upon complaint. *Id.* Sec. 1970.

Appeals to district court:—Any party to a proceeding before the commission, or any party affected by any order thereof, or the State of Minnesota, by the attorney general, may appeal therefrom to the district court of the county in which the complainants, or a majority of them, reside, or in case none of them reside in the state, or in case the order is made in a proceeding commenced by the commission on its own motion without complaint, to the district court of any county in which the carrier or warehouseman has an office, agent or place of business, at any time within thirty days after service of a copy of such order on the parties of record, as in this chapter provided, by service of a written notice of appeal on said commission, or on its secretary. Upon service of said notice of appeal, said commission, by its secretary, shall forthwith file, with the clerk of said district court to which said appeal is taken, certified copy of the order appealed from, together with findings of fact on which the same is based. *Id.* Sec. 1971, as amended by Laws, 1907, c. 167, Sec. 1.

Proceedings on appeal—Orders not appealed from:—The person serving such notice of appeal shall, within five days after

the service thereof, file the same with proof of service, with the clerk of the court to which such appeal is taken; and thereupon said district court shall have jurisdiction over said appeal, and the same shall be entered upon the records of said district court and shall be tried therein according to the rules relating to the trial of civil actions, so far as the same are applicable. The complainant before the commission, if there was one (otherwise the State of Minnesota), shall be designated as complainant in the district court, and the carrier or warehouseman as defendant. No further pleadings than those filed before the commission shall be necessary. Such findings of fact shall be prima facie evidence of the matters therein stated, and the order shall be prima facie reasonable, and the burden of proof upon all issues raised by the appeal shall be on the appellant. If said court shall determine that the order appealed from is lawful and reasonable, it shall be affirmed and the order enforced as provided by law. If it shall be determined that the order is unlawful or unreasonable it shall be vacated and set aside. Such appeal shall not stay or supersede the order appealed from unless the court, upon examination of said order, and the return made on said appeal, and after giving the respondent notice and opportunity to be heard, shall so direct. If such appeal is not taken such order shall become final, and it shall thereupon be the duty of the carriers affected to adopt and publish the rates or classifications therein prescribed. And all orders heretofore made, from which no appeal was taken, as provided by law, shall be deemed to have been in full effect for all purposes from the time when the right to appeal from such order expired. When no appeal is taken from an order, as herein provided, the parties affected by such order shall be deemed to have waived the right to have the merits of such controversy reviewed by a court, and there shall be no trial of the merits of re-examination of the facts of any controversy in which such order was made, by any district court to which application may be made for a writ to enforce the same. *Id.* Sec. 1971, as amended by Laws, 1907, c. 167, Sec. 2.

Order on dismissal in certain cases—Procedure:—Whenever in any proceeding pending before it relating to or involving the reasonableness of rates, fares, charges or classifications, the commission shall decide that has not jurisdiction for the reason that the traffic covered by such rates, fares, charges and class-

ification is interstate commerce, it shall make an order dismissing the proceeding, stating therein the ground of such dismissal, which order may be appealed from in like manner as other appealable orders of said commission. And if in any such proceeding one of the commissioners shall dissent from the order of dismissal, the question of its jurisdiction shall be certified to the district court of a county to which an appeal might be taken, and thereupon the commission shall notify all parties to the proceeding of such certification, stating the county and date thereof. Minn. Rev. Laws, 1905, Sec. 1973.

Filing papers—Effect:—When in any such case an appeal is taken or such question certified the commission shall forthwith file with the clerk of the proper district court all papers, pleadings, evidence and orders in the proceeding, and thereupon such court shall have full jurisdiction to hear and determine the question of the jurisdiction of said commission in reference to the matter appealed from or certified. Such proceeding may be brought on for hearing by either party on ten days' notice, either at a term or in vacation, and shall be heard upon the evidence taken before the commission and such further evidence as may be offered by either party. If the order of the commission is reversed, upon filing a copy of the order of reversal with the commission it shall forthwith proceed to determine the reasonableness of such rates, fares, charges and classification on the merits. *Id.* Sec. 1974.

Failure to obey order or law:—Whenever any such carrier or warehouseman shall fail to obey any law of the state or any order of the commission, the commission or any party interested may, upon verified petition alleging such failure, apply to the district court of the county in which such carrier or warehouseman has a principal office, or into which a line of railroad of such carrier extends, for the enforcement of such law or order or other appropriate relief. The court, upon such notice as it may direct, shall hear such matter as in case of an appeal from an order. On such hearing the findings of fact upon which such order is based shall be prima facie evidence of the matters therein stated, and the court may grant any provisional or other relief, ordinary or extraordinary, legal or equitable, which the nature of the case may require, and may impose a fine of not more than five hundred dollars for each day's failure to obey any writ,

process, or order of the court, in addition to all other penalties or forfeitures provided by law. A temporary mandatory or restraining order may be made in such proceeding, notwithstanding any undetermined issue of fact, upon such terms as to security as the court may direct. *Id.* Sec. 1975.

Trial:—The district courts shall be deemed always open for all civil proceedings under this chapter, and any such proceeding may be brought to trial in any county in the judicial district, and shall take precedence of all other matters except criminal cases. Except when there is a constitutional right to a trial by jury, not expressly waived, all such proceedings shall be tried summarily by the court. *Id.* Sec. 1976.

Incriminating questions:—In any proceeding under this chapter, or under any law relating to common carriers or public warehousemen, the court in its discretion may require a witness to answer any question, although his answer may tend to convict him of a crime, but no person so compelled to answer shall thereafter be liable to any prosecution for such crime. *Id.* Sec. 1977.

Costs and attorney's fees:—In any proceeding in district or supreme court under the provisions of this chapter, or under any law relating to common carriers or public warehousemen, whether by appeal or otherwise, the court may order the payment of such counsel fees and disbursements as it deems just and reasonable. *Id.* Sec. 1978.

Proceedings in name of state:—All actions or proceedings instituted by the railroad and warehouse commission shall be brought in the name of the state, and shall be prosecuted by the attorney general. *Id.* Sec. 1979.

Appeals to supreme court:—Any party to an appeal or other proceeding in district court under the provisions of this chapter may appeal from the final judgment, or from any final order therein, in the same cases and manner as in civil actions. No bond shall be required from the commission, and no such appeal shall stay the operation of such order or judgment unless the district or supreme court shall so direct, and unless the carrier appealing from a judgment or order fixing rates for transportation of persons or property shall give bond in a sum and with sureties approved by a judge of the court ordering the stay, con-

ditioned that the appellant will refund to the person entitled thereto any amount received for such transportation above the amount finally fixed by the court. Any person paying such excessive charges shall have a claim for the excess, whether paid under protest or not, and, unless refunded within thirty days after written demand made after final judgment, may recover the same by action against such carrier, or such carrier and the sureties on such bond. The appeal may be filed in the supreme court before or during any term thereof, and shall be immediately entered on the calendar and heard upon such notice as the court may prescribe. *Id.* Sec. 1980.

Interstate commerce commission—Authority of state commission to institute proceedings:—Whenever a resident of this state shall file with the state railroad and warehouse commission a petition directed to the interstate commerce commission of the United States, charging any railroad company or other common carrier doing business in this state, engaged in interstate transportation of freight, with any violation of the interstate commerce act of the United States, setting forth in such petition the facts constituting such violation, said railway commission, if they deem the matter one of public interest, shall file said petition with said interstate commerce commission and thereupon shall appear in said matter in the place of said petitioner and thereafter prosecute the same at the expense of the state. Sec. (1980) 1, Rev. Laws, Supp. 1909.

Same—Authority to appear in pending matter:—Whenever any matter shall be pending before the interstate commerce commission of the United States, between a resident of this state as petitioner, and any railroad company or other common carrier doing business in this state and engaged in interstate transportation of freights, charging such carrier with any violation of said interstate commerce act, upon application of the petitioner in said matter that state railroad and warehouse commission, in case they deem the questions involved in said matter of public interest, may appear therein and be substituted as a party in place of such petitioner and thereafter such matter shall be prosecuted by such commission at the expense of the state in the same manner as though originally begun by it. Sec. (1980) 2, Rev. Laws, Supp. 1909.

Crossings in cities and villages—Complaint—Hearing:—Upon written complaint authorized by a majority vote of all the members of the city council being filed with the railroad and warehouse commission of this state by the chief executive officer of any village or city in the State of Minnesota on its behalf, that the crossing of any railroad company, naming it, with any street in said village or city, describing it as dangerous to life and property and giving the reason thereof, said railroad and warehouse commission shall forthwith investigate the same, and to that end shall have at least one public hearing in the village or city making such complaint, at a time to be fixed by said commission, and a place to be held upon notice to be given by said railroad and warehouse commission to all parties interested, and shall be held in not less than thirty nor more than sixty days after the date of filing of such complaint. Sec. (1980) 3, Rev. Laws, Supp. 1909.

Same—Report—Order for flagmen, safety devices, etc.:—Within ten days after such public hearing said commissioners, by a majority vote of the members thereof, shall decide the matter set forth in said complaint, and shall make a report in writing in respect thereto, which shall include the findings of fact which the conclusions of the commission are based upon, together with the recommendation of said commission as to what kind of safety device, if any, should be installed at said crossing to make the same safe to life and property. Said findings shall be in writing and signed by the members of said commission in favor thereof, and shall be filed with the secretary of said commission and entered for record in his office. If said commission shall find in favor of further protection for said crossing it shall issue an order to the railroad company named in said petition directing said railroad company within sixty days after said order to establish and thereafter maintain, at such crossings such gates, flagman or safety devices as such commission may therein direct, and such as will render such crossing safe to life and property. Service of such order shall be made upon any railroad company in the same manner as a summons in a civil action is served. Sec. (1980) 4, Rev. Laws, Supp. 1909.

Same—Appeal—Order, how enforced:—Whenever any such order is made such railroad company may appeal therefrom in the same manner as appeals are allowed to be taken from

orders made by said commission fixing rates of railroad companies, and where no appeal is taken the order of the commission may be enforced by the attorney general the same as orders relating to the control of railroads. Sec. (1980) 5, Rev. Laws, Supp. 1909.

Same—Failure to comply—Penalty:—In addition to the foregoing, any railroad company failing to comply with the order of said commission, if not appealed from as hereinbefore provided, or if appealed from and confirmed on appeal, shall be liable to a penalty of fifty dollars per day for each and every day that said railroad company does not so conform to said order, to be recovered as damages in a civil action by and for the benefit of the village or city making such complaint. Sec. (1980) 6, Rev. Laws, Supp. 1909.

Same — Temporary flagman — Power of commission:—Whenever it shall appear that owing to any construction work or repair work, or for any other cause an unusual number of trains are being operated in or through any village or city in this state, the state railroad and warehouse commission shall have the power, upon complaint made by any village or city council through its chief executive officer, to compel the installation of a flagman or flagmen, as the case may be, without a hearing, and such order shall be complied with within five days; provided, that such railroad companies may remove such flagmen whenever the movement of trains through such village or cities assumes its normal conditions. Sec. (1980) 7, Rev. Laws, Supp. 1909.

Inspection of scales:—The railroad and warehouse commission shall have power to enforce reasonable regulations for the weighing of cars and of freight offered for shipment in carload lots. All track scales used by common carriers for the purpose of weighing carload freight shall be under the control and jurisdiction of the commission and subject to inspection, exempt from the jurisdiction of sealers of weights and measures. The entire cost of such supervision and inspection shall be a proper charge against the common carriers interested in or owning the several scales, the same to be paid upon a statement rendered by the commission. All moneys collected shall be credited to the grain inspection fund. Sec. (1980) 8, Rev. Laws, Supp. 1909.

Commission to fix joint rates:—If any carrier required by law to fix joint rates shall fail within reasonable time so to

do, or to apportion such rate, or to fix the terms and rates upon which cars may be transferred from one road to another in through shipment of freight, or to provide proper and convenient facilities for the transfer of freight from one road to another, the commission, upon proper notice and opportunity for hearing, shall establish and apportion such rate, and make all proper rules, regulations, and orders in regard to all such matters, subject to the provisions of this chapter. Minn. Rev. Laws, 1905, Sec. 1981.

Terms of connection with warehouses, etc.:—If the owner of any manufactory, warehouse, mill, stone quarry, or brick or lime kiln entitled to connection with any railroad, and the carrier operating such railroad, fail to agree upon the terms for such connection, upon petition of either party, and proper notice to the adverse party, the commission shall fix such terms by proceedings as herein provided in case of complaints to it, and subject to appeal as in such cases. *Id.* Sec. 1983.

Reports to commission:—Every carrier subject to supervision of the commission shall annually, on or before Sept. 30, unless additional time be granted, file with the commission a report verified by such carrier, or by its president, vice president, treasurer, comptroller, auditor, or receiver, in such form as the commission may prescribe, covering the year ending June 30th next preceding, and showing in detail the amount of capital stock issued; the amount and manners of payment therefor; the dividends paid; the surplus fund, if any; the number of stockholders; the funded and floating debts, and the interest paid or due thereon; the cost and value of all the carrier's property, franchises and equipments; the number of employes and officers, and the salary of wages paid each class; the amount expended for improvements, how expended, and the character of such improvements; the earning(s) and receipts from each branch of business and from all other sources; the operating and other expenses; the balance of profit or loss; and a complete exhibit of the financial operations of the year, with an annual balance sheet, the amount of land received as grants from the state and from the United States; the amount of such land sold and the average price received per acre; the amount unsold and its average appraised value per acre; information in regard to rates and regulations concerning fares and freights; agreements,

arrangements or contracts with express, telegraph, sleeping and dining car companies, fast freight lines, and other common carriers, with copies of such contracts, agreements or arrangements; and such other matters as the commission may require, and the commission may prescribe a uniform system of accounts and the manner of keeping the same, and may designate from time to time to what account any items shall be charged. Any such carrier failing to comply with the provisions of this section, or with any order of the commission made thereunder shall forfeit, for each day's default, one hundred dollars, to be recovered in a civil action in the name of the state. *Id.* Sec. 1984, as amended by Laws, 1907, c. 410, Sec. 1.

Reports of commission:—The commission shall report to the governor annually on or before December 1, and at other times if required by him, their doings for the preceding year, with such facts, statements, and explanations as will show the actual working of the system of railroad transportation of the state, in its bearings on the business and prosperity of the people, and such suggestions relative thereto as it shall deem proper. It shall also biennially recommend to the governor any amendment of the railroad and warehouse laws which it shall deem desirable, and, when directed by the governor, shall investigate any matter subject to its supervision, and report thereon. All such reports shall be transmitted by the governor to the legislature as soon as practicable. Minn. Rev. Laws, 1905, Sec. 1985.

Remedies cumulative—Attorney's fees:—Nothing in this chapter shall be construed to abridge or limit the duties and liabilities of common carriers or warehousemen, or the remedies now existing at common law or by statute, and the provisions of this chapter are in addition thereto. Any common carrier or warehouseman who shall do or cause to be done any act in this chapter forbidden, or fail to do any act therein enjoined, or who shall aid or abet in any such act or neglect, shall be liable in damages to any person injured thereby; and in any action for such damages the plaintiff, if he recover, shall be allowed by the court a reasonable attorney's fee, to be taxed and allowed in addition to statutory costs. *Id.* Sec. 1986.

Violations of law—Penalty:—Any common carrier or warehouseman who shall do, or attempt to do, any act forbidden by this chapter, or shall fail to do anything therein required of him,

or shall wilfully suffer or permit any such unlawful act or omission, when no specific penalty is imposed therefor, if a natural person, shall be guilty of a gross misdemeanor, and shall be punished by a fine of not less than twenty-five hundred dollars, nor more than five thousand dollars for the first offence, and not less than five thousand dollars nor more than ten thousand dollars for each subsequent offence; and, if such carrier or warehouseman be a corporation, it shall forfeit to the state for the first offence not less than twenty-five hundred dollars nor more than five thousand dollars, and for each subsequent offence not less than five thousand dollars nor more than ten thousand dollars, to be recovered in a civil action. All fines and forfeitures collected under the provisions of this chapter shall be paid into the state treasury to the credit of the general revenue fund. *Id.* Sec. 1987.

Construction of chapter:—The provisions of this chapter shall be liberally construed with a view to the public welfare, efficient transportation facilities, and substantial justice between shippers and passengers and common carriers, and the commission shall at all times do everything within the scope of its powers to secure such ends, and to facilitate commerce and the safety, convenience, and comfort of passengers and employees. *Id.* Sec. 1988.

Orders prima facie evidence:—In any action or proceeding brought to enforce any order of the commission, or when such order is brought in question in any of the courts of the state, it shall be prima facie evidence of the facts therein stated. *Id.* Sec. 1989.

Physical valuation of railroad properties—Statements:—The railroad and warehouse commission, hereinafter called the commission, is hereby authorized, at all times, to keep up the physical valuation of the railroad properties of this state, and to that end all railroad companies are required to furnish to the commission on the July 31st of each year, and at such other times as the commission may require, a detailed statement showing changes in the physical conditions of its properties in this state and the elements of cost entering into such changes for both debits and credits of such property, and the distribution of the debits and credits, whether charged to operating or capital account. Such statement shall be furnished in the manner and

form prescribed by the commission. Rev. Laws, Supp. 1909, Sec. (1989) 1.

Same—Powers of commission:—The commission shall have the authority to examine all books, contracts, vouchers, receipts and all other papers or documents that it may deem necessary for the purposes of this act. *Id.* Sec. (1989) 2.

Side tracks to elevators, mills, etc.:—Every such company, upon written demand of the owner of any grain warehouse or mill of not less than five thousand bushels capacity, adjacent to the right of way of such company and at or near any regular station thereof, shall construct, maintain and operate at its own expense proper side tracks connecting such warehouse or mill with the tracks of such railroad, and afford the owner thereof proper and reasonable facilities for shipment therefrom. Should additional right of way be required for such side track, the cost and expense of procuring it shall be paid by the owner of said mill or warehouse. Such company shall also construct, maintain and operate side tracks connecting with its road any grain warehouse, mill, quarry, brick or lime kiln, or manufactory adjacent thereto, on such terms as may be agreed upon with the owner or fixed by the commission, on application of either party. Rev. Laws, 1905, Sec. 2006.

Defined:—All elevators or warehouses located within the switching limits of St. Paul, Minneapolis and Duluth, and other points in the state which are now, or may hereafter be designated as terminal points, in which grain is received for storage in bulk and that of different owners mixed together or so stored that identity of the different lots or parcels is not preserved, shall be public warehouses, known as terminal warehouses. *Id.* Sec. 2047, as amended by Act approved April 1, 1913, Laws, Minn., 1913, Ch. 153, p. 178.

License:—All public warehouses shall be annually licensed by and under the supervision and subject to the inspection of the commission. Written application under oath shall be made to the commission for license, specifying the kind of warehouse, its location, the name of the person, firm, or corporation operating the same, and of each member of the firm or officer of the corporation. The license fee shall be two dollars. Such license may be revoked by the commission for violation of law or of any rule or regulation by it prescribed, upon notice and hearing. A license

may be refused to any warehouseman whose license has been revoked within the preceding year. Rev. Laws, 1905, Sec. 2048.

Storage and inspection — Warehouseman's duties — Receipts:—Every such warehouseman shall receive for storage and shipment, so far as the capacity of his warehouse will permit, all grain in suitable condition for storage, tendered him in the usual course of business, without discrimination of any kind. All grain shall be inspected on receipt and stored with other grain of the same grade. A warehouse receipt in the following form shall be issued:

STUB RECORD.

.....Elevator Co.

Warehouse Receipt No.....

.....Minn., ...190.....

The.....Elevator Company has received in store in its elevator known as.....situated at.....

Minnesota, for storage from.....owner, ...

bushels of.....which has been duly inspected by a duly authorized inspector of grain appointed by the State Railroad and Warehouse Commission of Minnesota, and has been graded by said inspector as No....., and is that grade. Said grain, or an equal amount of grain of the same kind and grade is deliverable upon the return of this receipt properly indorsed by the owner above named and the payment of all lawful charges; in case of grain stored separately in a special bin, at the request of the owner or consignee, the identity of such grain will be preserved while in store and said grain will be delivered as such separate lot or parcel, in accordance with law, upon surrender of the receipt. Loss by fire, heating or the elements is at owner's risk.

Countersigned by.....Secretary.

The.....Elevator Company conducts said elevator as a public terminal warehouse and receives and stores therein grain of others for hire.

..... Bushels .....Grade

.....

By.....

Receipt No.....

.....190....

Received in store from.....

.....

Bush..... Lbs..... Grade.....

Initial .....

Car No.....

Bushels .....

Car No....

Bushels ...

Car No....

Bushels ..

The receipts shall be consecutively numbered and delivered to the owner immediately upon receipt of each lot or parcel of grain, giving the true and correct grade and weight thereof. The manner of receipt of such grain shall be stated in the receipt, with the number and distinctive mark of each car, and the name of each barge or

Sale, etc., of stored grain forbidden:—No such warehouseman shall sell or otherwise dispose of or deliver out of store any such grain without the express authority of its owner and the return of the storage receipt, except as herein provided, nor mix together grain of different grades in store, nor select grain of different qualities, but of the same grade, for storage or delivery, nor in any way tamper with grain of others while in his possession or custody, with the purpose of securing any profit to himself or any other person, or attempt to deliver grain of one grain for that of another. Any person violating any provision of this section shall be punished by a fine of not more than one thousand dollars or imprisonment in the state prison for not more than five years, or both. Rev. Laws, 1905, Sec. 2050.

Delivery of grain:—Upon return of the receipt to the proper warehouseman, properly indorsed, and upon payment or tender of all advances and legal charges, grain of the grade and quantity named therein shall be delivered to the holder of such receipt within twenty-four hours after facilities for receiving the same have been provided. If such warehouseman shall fail so to deliver it, he shall be liable to the owner in damages at the rate of one cent a bushel for each day's delay, unless he shall deliver the property to the several owners in the order of demand as rapidly as it can be done by ordinary diligence. If upon such demand and tender the warehouseman shall fail so to deliver such grain, the person entitled thereto may recover the same by action; and such warehouseman shall also be guilty of larceny. *Id.* Sec. 2051.

Bond:—Every person applying for a license for a terminal warehouse at Minneapolis, St. Paul, or Duluth, shall file with the commission a bond to the state in a penal sum to be fixed by such commission, not less than fifty thousand dollars, conditioned for the faithful discharge of his duties as such warehouseman, and full compliance with all the laws of the state and rules of the commission relative thereto. If such warehouseman apply for a license for more than one warehouse in the same county, but one bond need be given. *Id.* Sec. 2052, as amended by Laws 1909, c. 82, Sec. 1.

Special bins:—At the request of the owner or consignee, such warehouseman shall subject to the rules made by the com-

mission, store any grain of the same owner or consignee, in separate bins, which grain shall then bear the name of the owner or consignee. The warehouseman shall issue to the owner or consignee, distinguishing whether owner or consignee, a warehouse receipt or receipts for all or any part of such grain. Every such receipt shall give the name of the owner or consignee and state the amount, kind and grade of grain for which the receipt is issued, and that the grain of such owner or consignee is stored separately from the grain of any other owner or consignee. The warehouseman shall, on presentation and surrender of the warehouse receipt bearing the proper endorsement of the person to whom it was issued, deliver to the person surrendering the receipt such amounts of the same grain as may be demanded and on the same grade as called for by the receipt. The warehouseman at the request of the owner or consignee may clean, dry, mix, or otherwise improve the condition or value of such grain, and it shall be delivered separately from the grain of any other owner or consignee upon the order of the owner or consignee, as called for by the warehouse receipts issued therefor and endorsed by such owner or consignee. *Id.* Sec. 2053.

Inspection:—All grain received at a terminal warehouse shall be inspected and graded by a state inspector, and reinspected in like manner upon delivery from such warehouse. The charges for such inspection shall be paid by the warehouseman and added to the storage, and the chief inspector may recover such charges from the warehouseman. Rev. Laws, 1905, Sec. 2054.

Rules to be prescribed by commission:—The commission shall make such rules as may be necessary in regard to the receipt, care, and delivery of grain, the issuance, cancelation, division, and consolidation of warehouse receipts, and such other matters relative to the management of the business of terminal warehouses as it shall deem proper. *Id.* Sec. 2055.

Statements to commission:—Every terminal warehouseman shall post conspicuously in his business office, on or before Tuesday morning of each week, a statement of the amount of grain of each kind and grade in store in his warehouse at the close of business on the preceding Saturday, and render a like statement, verified by him or his bookkeeper having personal knowledge of the facts, to the warehouse registrar of the commission. He shall

also make a daily statement to said registrar of the amount of each kind and grade of such grain received in store in his warehouse the preceding day; the amount shipped or delivered, and the warehouse receipt canceled on such delivery, stating the number of each receipt and the amount, kind and grade of grain shipped or delivered thereon; the amount, kind, and grade of grain delivered for which no warehouse receipt was issued, and how and when the same was received, the aggregate of such reported cancelations and delivery of unreceipted grain corresponding in amount, grade and kind with the shipments and deliveries reported; and shall also at the same time report the receipts canceled upon issue of new ones, with the number of each such receipt canceled and that issued in its place. He shall also furnish the registrar any further information regarding receipts issued or canceled necessary for correct record of all such receipts, and of grain received and delivered, and shall make a further verified statement to the commission of the condition and management of any terminal warehouse under his control, at such times and in such form as the commission may require. It is hereby made the duty of the secretary of the commission to act as warehouse registrar in accordance with the spirit and intent of this chapter. *Id.* Sec. 2056.

Schedule of rates—Maximum charges:—Every such warehouseman shall annually, during the first week in September, publish in some newspaper—daily if there be one—published in the place where his warehouse is situated, a schedule of storage rates for the ensuing year, which shall not be increased during such year, and no discrimination in rates shall be made by any such warehouseman. The charge for receiving, handling, storing, and delivering grain at such warehouse shall not exceed one and one-half cents per bushel for the first fifteen days or part thereof, one-half cent for each fifteen days or part thereof thereafter, or four cents for continuous storage from November 15 to May 15 next succeeding. *Id.* Sec. 2057.

Examination:—Every person having an interest in any grain stored in any such warehouse, and every state grain inspector, shall have the right to examine at all times during ordinary business hours any grain so stored, and all parts of such warehouse; and every such warehouseman, his agents, and serv-

ants, shall furnish proper facilities for such examination. *Id.* Sec. 2058.

Control and inspection of scales:—All scales in such terminal warehouses, or used for weighing grain in railroad yards at terminal points, shall be under the control of the state weighmasters and subject to inspection by them, exempt from the jurisdiction of sealers of weights and measures. They shall be inspected at the request of any person interested in any grain weighed or to be weighed thereon. If found incorrect, the cost of inspection shall be paid by the owner thereof; otherwise by the person requesting the inspection. No scales found incorrect shall be used until re-examined and found correct. *Id.* Sec. 2059.

Boards of grain inspection:—The boards heretofore known as the boards of appeals for the inspection of grain at Minneapolis and at Duluth shall hereafter be known as "The Minneapolis Grain Inspection Board" and "The Duluth Grain Inspection Board," respectively. Each board shall consist of three members appointed by the governor, who shall have the same qualification as grain inspectors, and not more than two of whom shall be of the same political party. Their term of office shall be for three years from August 1st succeeding their appointment, and until their successors qualify, except as hereinafter provided. At the expiration of the terms of the present members, on or before August 1st, 1909, the governor shall appoint one member of each of the above named boards to serve for one year, one member of each board to serve for two years and one member of each board to serve for three years. The governor may remove any member and fill any vacancy for the unexpired term. Members of either board shall have a right to act at either Duluth or Minneapolis. *Id.* Sec. 2060, as amended by Laws, 1909, c. 158, Sec. 1.

Bond:—Before entering on the duties of his office, each member of such boards shall give bond to the state, with sureties to be approved by the governor, in the sum of five thousand dollars, conditioned for the faithful discharge of the duties of his office. No surety on any such bond shall be interested in or connected with any grain, warehouse or commission business, firm, or corporation. Rev. Laws, 1905, Sec. 2061.

Minnesota grades:—The two boards, or a majority of the six members thereof, shall meet annually in joint session on or

before September 15, and establish the grades of all grain subject to state inspection, to be known as "Minnesota Grades." Such grades, and the tests thereof, shall be published daily for one week in a newspaper in each of the cities of Minneapolis and Duluth, and all grain received at any public warehouse shall be graded accordingly. Such grades shall not be changed before the next annual meeting without the concurrence of at least five members of such boards. *Id.* Sec. 2062.

Duties of boards:—Each of such boards shall recommend to such commission the discharge of any inspector deemed by them incompetent or otherwise unfit, and make such other reports and recommendations as they deem advisable. *Id.* Sec. 2063.

Salaries:—The salaries of the members of such boards shall be fixed by the commission and approved by the governor, and such salaries and all their necessary expenses shall be paid out of the grain inspection fund on the order of the commission. *Id.* Sec. 2064.

Chief inspector:—Such commission shall appoint a chief inspector, whose term of office shall be for two years, unless sooner removed by the commission. Such inspector shall give bond to the state in the sum of ten thousand dollars, with sureties to be approved by the commission, conditioned for the faithful and impartial discharge of the duties of his office according to law and the rules and regulations prescribed by the commission, and the payment of all damages sustained by any person, caused by his failure to perform such duties. *Id.* Sec. 2065.

Deputy inspectors:—The chief inspector, with the approval of the commission, shall appoint such number of deputies as may be required. One such deputy in each of the cities of St. Paul, Minneapolis, and Duluth shall be styled "chief deputy." Each deputy inspector shall give bond as required of the chief inspector, but in the sum of five thousand dollars. They shall be under the control and supervision of the chief inspector, and may be removed by him. *Id.* Sec. 2066.

Standard samples:—The chief inspector shall furnish standand samples of grain of each Minnesota grade to any grain warehouseman in the state, upon request and payment of the actual cost thereof. *Id.* Sec. 2067.

Duty of inspectors:—Such inspectors shall inspect and grade all grain received at or shipped from any terminal warehouse in car-load or boat-load lots, and give a certificate of the inspection to the person entitled thereto. Their decision shall be conclusive as to the grade and dockage of such grain, and the certificate shall be evidence thereof, unless changed upon re-inspection or appeal. *Id.* Sec. 2068.

Appeals:—Any owner, consignee or shipper of grain, or any warehouseman, who is dissatisfied with the inspection of grain by any chief or deputy inspector, may appeal from his decision to the nearest grain inspection board by filing notice of such appeal with the chief deputy inspector and paying a fee, to be fixed by the commission, which shall be refunded if the appeal is sustained. Such deputy inspector shall forthwith transmit the notice to said board of appeals. The decision of said board, fixing the grade of such grain shall be final. *Id.* Sec. 2069, as amended by Laws 1907, c. 55, Sec. 1.

Withholding grain from store:—The owner or consignee of grain consigned to a terminal warehouse may have the same withheld from storage and delivered to him or his order by giving notice to the carrier in possession thereof, and to the warehouseman to whom such grain was consigned, and paying all charges that may be a lien thereon. Such grain shall be removed within twenty-four hours after the car or boat containing the same is placed in a proper and convenient place for unloading. If the grain be delivered contrary to such notice, such warehouseman, and the carrier so delivering the same, shall be jointly and severally liable to the owner for double its value. Rev. Laws, 1905, Sec. 2070.

Unauthorized storage forbidden:—No contract, agreement, understanding, or combination shall be entered into between any public warehouseman and any common carrier or other person for the delivery of any grain at any public warehouse contrary to the direction of the owner, nor shall any grain be so delivered or received. *Id.* Sec. 2071.

Weighmasters and weighers:—The commission shall appoint at each terminal point a state weighmaster and such weighers as may be necessary, who shall have the control of the weighing of all grain subject to state inspection, except when other-

wise ordered by the party shipping the same. Every such weighmaster and weigher shall give bond to the state in the sum of five thousand dollars, conditioned for the faithful discharge of his duty. *Id.* Sec. 2072.

Weighmasters' records and certificates:—All weighmasters and weighers shall keep such records as may be prescribed by the commission and shall furnish to any person for whom weighing is done a certificate under his hand, showing the amount of each weight, the number and initial letter or other distinctive mark of each car weighed, place and date of weighing, and contents of car. Such certificate shall be prima facie evidence of the facts therein certified. *Id.* Sec. 2073.

Fees for inspection and weighing:—The fees for inspection and weighing shall be fixed by the commission, and shall be a lien upon the grain. If the grain is in transit, such fees shall be paid by the carrier and treated as advance charges, and, if received for storage, by the warehouseman, and added to the storage charges. All moneys so collected, and all fines and penalties for violation of any provision of this subdivision, shall be paid into the state treasury, and known as the "Grain Inspection Fund," and paid out only on order of the commission and auditor's warrant. All interest received from deposits of said moneys shall be credited on the first of each month to such fund, and notice of the amount of such interest shall be sent to the chief inspector. *Id.* Sec. 2074.

Qualifications of inspectors and weighmasters:—No member of a board of appeals, chief or deputy inspector, weighmaster, or weigher shall during his term of service be in any way interested in the handling, storing, shipping, purchasing or selling of grain, or any of its products, nor in the employment of any person or corporation engaged therein, nor shall he be a member of any board of trade or organization of like character. *Id.* Sec. 2075.

Filing of bonds and suits thereon:—All bonds required by this subdivision shall be filed with the secretary of state, and suit may be brought thereon by any person injured by the misconduct of the principal. *Id.* Sec. 2076.

Removal of inspectors and weighmasters:—Upon written complaint filed with the commission, charging any inspector, dep-

uty inspector, weighmaster, or weigher with official misconduct, inefficiency, incompetency, or neglect of duty, the commission shall investigate such charge, and, if it be sustained, shall remove such officer. *Id.* Sec. 2077.

Penalties—Personating inspector:—Any person not duly appointed and qualified, who shall assume to act as a state inspector or deputy inspector of grain, shall be guilty of a misdemeanor and be punished by a fine of not less than fifty dollars nor more than one hundred dollars. *Id.* Sec. 2078.

Misconduct of inspectors and weighmasters:—Any inspector or deputy inspector, weighmaster or weigher, who shall knowingly or carelessly inspect or weigh any grain improperly, or give any false certificate of inspection or weight, or accept money or other consideration, directly or indirectly, for any neglect or improper performance of duty, or who shall be guilty of any neglect of duty, and any person who shall improperly influence, or attempt to influence, any such officer in the performance of his official duty, shall be guilty of a gross misdemeanor and shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or imprisonment in the county jail for not less than thirty days nor more than one year, or by both such fine and imprisonment. *Id.* Sec. 2079.

Certificates not issued under state authority—Use of certain words prohibited:—Any person who is not connected with the state weighing department is hereby prohibited from using the term "weighmaster," "state weighmaster," any representation of the seal of the state, or any other words or device calculated or tending to indicate that the certificate or receipt is issued under state authority, or to otherwise deceive or mislead the public or any person interested, when issuing certificates or receipts purporting to show the weight of grain, hay or straw; provided, that where weighing is done under the authority of the charter or an ordinance of any city or village, or under the auspices of any incorporated chamber of commerce, board of trade or exchange, any certificate or receipt issued therefor shall on its face plainly show its source and the signature of the person signing the same shall be followed by a designation plainly showing the capacity in which the said signer is acting, and the term "weighmaster" may be a part of such designation. Provided, further, that every such certificate or receipt issued by

anyone other than the duly authorized representatives of the state weighing department, shall have plainly stamped or printed across its face in red ink in letters not less than one-quarter of an inch high, the words, "This Certificate Is Not Issued Under State Authority." Sec. (2079) 1, Rev. Laws, Supp. 1909.

Same—Penalty for violation:—Any person found guilty of violating section 1 (2079-1) of this act shall be guilty of a misdemeanor. *Id.* Sec. (2079) 2.

Obstructing weighmaster:—Any person or corporation who shall obstruct any state weighmaster or weigher in the performance of his official duties, by preventing his proper access to the scales used in the weighing of grain or otherwise, shall forfeit to the state one hundred dollars for each offense. Rev. Laws, 1905, Sec. 2080.

Standing appropriation:—All moneys which shall come into the state treasury on account of the grain inspection fund, or so much thereof as may be necessary, are hereby annually appropriated to the payment of the salaries, fees, and expenses provided in this subdivision, to be disbursed on the order of the commission. The commission shall fix the salaries of inspectors, weighers, and all other employees of the state grain department and prescribe the time and manner of payment thereof. *Id.* Sec. 2081.

Inspectors to examine cars:—The chief inspector of grain, and any deputies, or officials, serving under him, before opening the doors of any cars containing grain, upon their arrival at any of the several places designated by law as terminal points in this state, for the purposes of inspecting the same, shall first ascertain the condition of such cars and determine whether any leakages have occurred while said cars were in transit; also whether or not the doors are properly secured and sealed, making a record of such facts in all cases and recording the same in a proper book to be kept for the purpose. After such examination shall have been duly made and recorded and the inspection of such grain has been made, the said officials of the state grain inspection department above mentioned, shall securely close and reseal such doors as have been opened by them, using a special seal of the said state grain inspection department for the purpose. A record of all original seals broken by said officials and the time when broken; also a record of all state seals substituted therefor and

the time when such state seals were substituted, together with a full description of said seals, with their numbers, shall be made by the said officials. *Id.* Sec. 2082.

Police protection:—All railroad companies, warehousemen and millers operating at the terminal points of this state shall furnish ample and sufficient police protection at all of their several terminal yards and on their terminal tracks to securely protect all cars containing grain, while the same are in their possession, shall prohibit and restrain all unauthorized persons, whether under the guise of samplers, sweepers, or under any other pretext whatever, from entering or loitering in or about their respective railroad yards or tracks, and from entering any cars of grain under their control, or removing grain therefrom, and shall employ and detail such number of watchmen as may be necessary for the purpose of carrying out the provisions of the within section. Any failure to comply with the provisions of this section, and section 2082, shall be deemed a misdemeanor. *Id.* Sec. 2083.

Local warehouses—Defined:—All elevators and warehouses in which grain is received, stored, shipped, or handled, situated on the right of way of any railroad company, or adjacent thereto to be used in connection with its line of railway at any station or siding other than Minneapolis, St. Paul and Duluth, shall be public warehouses, known as local warehouses, and shall be under the supervision and subject to the inspection of the commission. *Id.* Sec. 2084.

License:—All such elevators and warehouses shall be licensed annually by the commission. Application for license must be made before transacting warehouse business. Every license issued shall expire on August 31 following. The fees shall be one dollar for each license issued. The fees so collected shall be paid into the state treasury and credited to the state grain inspection fund. Such license shall be revoked by the commission for cause upon notice and hearing. *Id.* Sec. 2085 (1), as amended by Act April 18, 1911, Sess. Laws, 1911, p. 224.

This act shall take effect and be in force from and after its passage. Approved April 18, 1911. *Id.* Sec. 2085 (2).

Commission may determine when to be open:—The railroad and warehouse commission, after hearing, may determine when it is necessary for any person operating a local warehouse to keep

the same open for business in order to properly serve the public. Sec. (2085) 1, Rev. Laws, Supp. 1909.

Same—Failure to keep open—Penalty:—Any person operating such local warehouse who shall fail to keep the house open for business during the time fixed by the commission, after receiving written notice of the same, shall be deemed guilty of a misdemeanor. *Id.* Sec. (2085) 2.

State inspection and weighing:—The commission, upon proper application for state inspection or weighing of grain by any person interested at any other point than St. Paul, Minneapolis or Duluth, may furnish such service, if it is deemed expedient: Provided, such person first agrees to pay all costs of the service. Rules governing state inspection and weighing at other terminals shall apply at such points. Rev. Laws, 1905, Sec. 2086.

Storage—Duties of warehouseman—Receipts:—Every public warehouseman shall receive for storage and shipment, so far as the capacity of his warehouse will permit, all grain in a suitable condition for storage tendered him in the usual course of business without discrimination of any kind. A warehouse receipt shall be issued to the party delivering the grain, which shall state the place and date when the grain was received, the name and residence of the owner of the grain, the kind and grade of the grain, the gross weight, dockage and net weight of the grain as per Minnesota standard weight, and in addition thereto such receipt shall contain, either on its face or reverse side, the following specific warehouse and storage contract: "This grain is received, insured and stored under the following conditions: The maximum charges for receiving, insuring, handling, storing fifteen days and delivering grain is two cents per bushel. Storage after the first fifteen days, one-half cent per bushel for each fifteen days or part thereof, for the first three months; after that one-half cent per bushel for each thirty days or part thereof. If grain is cleaned at owner's request, one-half cent per bushel. This grain has been received and stored with grain of the same lawful grade. Upon the return of this receipt and payment or tender of stated lawful charges accrued up to the time of said return of this receipt, the above amount, kind and grade of grain will be delivered within the time prescribed by law to the person above named, or his order, either from this warehouse, or if the

owner so desires, in quantities not less than a carload on track at any terminal point upon the same line of railway within this state, designated by said owner, where state inspection and weighing is in force, the grade and weight thereof to be determined by state inspection and weighing as provided by law." Attached to the receipt shall be a stub record stating number and date of receipt and the gross weight, dockage and net weight; such stub record to remain in the possession of the warehouseman for inspection by the commission or interested parties. The receipts shall be consecutively numbered and delivered to the owner immediately upon receipt of each lot or parcel of grain giving the true and correct grade and weight thereof. Any provision or agreement in such receipt not contained in the aforesaid specific warehouse and storage contract shall be void. The failure to issue such receipt as directed, or the issuance of slips, memoranda or any other form of receipt embracing a different warehouse or storage contract, shall be deemed a misdemeanor, and no such slip, memoranda, or other form of receipt shall be admissible in evidence in any civil action. *Id.* Sec. 2087, as amended by Laws 1907, c. 230, Sec. 1, and Laws, 1909, c. 384, Sec. 1.

Purchase by warehouseman—Receipt:—There may be printed on such storage receipts a receipt to be executed in case such storage receipt is purchased by such warehouseman, such receipt to be executed in the presence of the owner of such storage receipt and signed by him, and the warehouseman shall also record such purchase as to the total amount paid and the amount paid per bushel on the stub record of his storage receipt book. Such receipt shall be in substantially the following language and form:

Received from.....Elevator Company.....dollars and storage, in full payment for the grain represented by this storage receipt. Gross price.....cents, storage.....cents, net price.....cents. All blank spaces in this receipt were filled in before the same was signed by me, and I hereby certify that I am the owner of the grain for which this receipt was issued and that there are no liens, chattel mortgages or other claims against the grain represented by this receipt.

Signed.....
Owner.

Date.....19..

Provided, that nothing in this section contained shall be construed to affect in any manner the conditions of the storage contract specified in section 1 (2087) of this act. *Id.* Sec. 2.

Delivery of grain:—On the return and surrender of any receipts and payment of lawful charges, the grain represented therein shall be immediately deliverable to the owner, or his order, and shall not be subject to any further charge for storage after demand for delivery shall have been made and facilities for receiving and shipping the same have been provided. If not delivered within twenty-four hours after such demand, the warehouseman shall be liable to the owner in damages not exceeding one cent a bushel for each day's delay unless he shall deliver to different owners in the order demanded as rapidly as it can be done by ordinary diligence. In case that terminal delivery of grain is demanded and the warehouseman shall forthwith issue and deliver to the owner or his order a surrender receipt, such receipt to state the date, name of owner, the grade, gross weight, dockage, and net weight of the grain represented by such receipt, making such grain deliverable in its net amount at any terminal market in the state designated by the owner of said receipts on the same line of railroad, such grain to be subject to the usual freight, inspection, weighing and switching charges when it arrives at the terminal so designated, the freight to be computed on the basis of the gross weight of the grain represented by such surrender receipt. The owner of the receipts may at his option order a car in which the grain covered by his surrender receipt is to be transported, and in such case the grain shall be delivered immediately when the car so ordered is placed at the warehouse. Rev. Laws, 1905, Sec. 2088, as amended by Laws 1909, c. 69, Sec. 1.

Records and warehouse receipts:—Every local warehouseman shall keep in proper books a record of all grain received, stored, or shipped, stating the weight, grade, dockage for dirt or other cause, and the name of the owner. Every warehouse receipt issued by him shall state that delivery to the owner is to be made at the place of original storage, or, at the option of the owner, in quantities not less than a car load on track on the same line or railway at any terminal point in the state to be designated by the owner. Rev. Laws, 1905, Sec. 2089.

Certificates of shipment:—If the owner elects a delivery on track at a terminal point, the warehouseman shall give him a certificate in evidence of the surrender of the original warehouse receipts and his right to such shipment, which shall state on its

face the date and place of issue, the name of the consignor, consignee and destination, and specify the kind of grain, and grade and net quantity, exclusive of dockage, to which the owner is entitled. Such grain shall be subject only to the freight and other lawful charges accruing up to the time of delivery at terminal point. No actual delivery shall be deemed to have been made until the grade and quantity of the grain called for in the certificate as determined by the inspection and weighing has been established. *Id.* Sec. 2090.

Grain—Standard bushel:—No person purchasing, selling or storing grain in any public local warehouse in this state, as the same is now or may be hereafter defined by law, shall use any other measure for such grain than the standard bushel, and no other number of pounds shall be used or called a bushel than the number of pounds provided by law as the standard weight of the kind of grain in question. Rev. Laws, Supp. 1909, Sec. (2090) 1.

Same—Pooling prohibited:—It shall be unlawful for any person, firm or corporation engaged in the buying, selling or handling of grain in any public local warehouse in this state, or for the local agent in charge of such warehouse, or any other agent of the person, firm or corporation, operating the same, to enter into any contract, agreement, combination or understanding, with any other person, firm or corporation, owning or operating any other public local warehouse at any railway station, their agent or agents, whereby the amount of grain to be received or handled by said warehouses, at such station, shall be equalized or pooled between said warehouses, or whereby the profits or earnings derived from said warehouses shall be divided or pooled, or apportioned in any manner, or whereby the price to be paid for any kind of grain at such station shall be fixed or in any manner affected, and each day of the continuance of any such agreement, contract or understanding shall constitute a separate offense. *Id.* Sec. (2090) 2.

Same—Penalty for violation—Revocation of license:—Any person, firm or corporation, or any officer or agent or any person, firm, or corporation, who shall violate the provisions of this act shall be guilty of a misdemeanor and shall be punished by a fine of not less than fifty dollars or more than one hundred dollars, and by imprisonment in the county jail for not less than thirty

days, or more than three months. The railroad and warehouse commission of this state shall have the power, and it shall be their duty, whenever they find, after a hearing, that the provisions of this act have been violated by any person holding a license to conduct a public warehouse in this state, to revoke and annul such license, and in such case no new license shall be granted to the person whose license is so revoked nor to any one either directly or indirectly engaged with him in said business, for the period of one year. *Id.* Sec. (2090) 3.

Reports to commission:—Every such warehouseman shall on or before the fifteenth day of July in each year render such commission on blanks or forms prepared by it an itemized and verified report of all business transacted by him as a public warehouseman during the year beginning July 1st of the preceding year and ending June 30th of the current year. Such report shall state the grade, gross weight and dockage of all grain of various kinds in his warehouse at the beginning of the year, the grade, gross weight and dockage of all grain received, the grade, gross weight and dockage of all grain shipped or delivered from such warehouse, and the grade, gross weight and dockage of all grain remaining in the warehouse at the end of the year, and such report shall particularly specify and account for any overage or shortage in any kind of grain accruing during the year. Such report shall also state the weight basis upon which all such grain has been received, and the weight basis on which the same has been shipped or delivered. The commission may also require special reports from such warehousemen at such times as the commission may deem expedient. The commission may cause every such warehouse and the business thereof and the mode of conducting the same to be inspected by one or more of its members or by its authorized agent whenever deemed proper, and the property, books, records, accounts, papers and proceedings of every such warehouseman shall at all times during business hours be subject to such inspection. The expense incurred by the commission in carrying out the provisions of this section shall be paid out of the state grain inspection fund. Rev. Laws, 1905, Sec. 2091 (1), as amended by Act April 18, 1911, Sess. Laws, 1911, p. 357.

This act shall take effect and be in force from and after its passage. Approved April 18, 1911. *Id.* Sec. 2091 (2).

Delivery for storage a bailment:—The delivery of grain to any warehouseman for storage, although it be mingled with that of others, or shipped or removed from the original place of storage, shall be deemed a bailment, and not a sale. Rev. Laws, 1905, Sec. 2092.

Carriers' receipts:—Every common carrier transporting grain shall give the shipper, on request, a receipt for the number of pounds of grain received from him, and shall deliver such quantity to the consignee or proper connecting carrier, less loss from transportation, not to exceed sixty pounds to each car. *Id.* Sec. 2093.

Penalties:—Such carrier shall forfeit to the state, for each refusal to give such receipt, not less than ten dollars nor more than fifty dollars, and for each failure to deliver the proper quantity of grain, not less than fifty dollars nor more than one hundred dollars. *Id.* Sec. 2094.

Elevator charges, when forbidden:—No railroad company shall charge or collect elevator or other charges for handling grain or for the use of any elevator, when such grain is loaded by the shipper and not passed through an elevator, or make any distinction in charges of any kind against a person shipping grain otherwise than through an elevator. *Id.* Sec. 2095.

Unlicensed warehouses:—Any person or corporation operating such warehouse without license shall forfeit to the state, for each day's operation, fifty dollars, and such operation may be enjoined upon complaint of the commission. *Id.* Sec. 2096.

Warehouse receipts, etc., transferred by indorsement:—Warehouse receipts and bills of lading for property in transit, unless the words "Not negotiable" are plainly written or stamped on the face thereof, may be transferred by indorsement, and such indorsement shall transfer to the indorsee the title to the property and all rights of the indorser in respect thereto. *Id.* Sec. 2097.

Bill of lading—Order bill of lading defined:—That whenever any common carrier, railroad or transportation company (hereinafter termed carrier) shall issue a bill of lading for the transportation of property from one place to another within this state, or between places one of which is within this state, which bill shall be, or purport to be, drawn to the order of the

shipper or other specified person, or which shall contain any statement or representation that the property described therein is, or may be deliverable upon the order of any person therein mentioned, such bill shall be known as an "Order Bill of Lading" and shall conform to the following requirements:

(a) In connection with the name of the person to whose order the property is deliverable, the words "Order of" shall prominently appear in print on the face of the bill, thus "Consigned to Order of ....."

(b) The bill shall be printed on yellow paper, 8½ inches wide by 11 inches long.

(c) It shall contain on its face the following provision: "The surrender of this original order bill of lading properly indorsed shall be required before delivery of the property."

(d) It shall not contain the words "not negotiable" or words of similar import. If such words are placed on an order bill of lading, they shall be void and of no effect.

(e) Nothing herein shall be construed to prohibit the insertion in an order bill of lading of other terms or conditions not inconsistent with the provision of this act; but it shall be unlawful to insert in such bill any terms or conditions contrary to, or inconsistent with, such provisions and it shall be unlawful for any carrier to insert in such bill any term or condition limiting the liability of such carrier for actual loss. Rev. Laws, Supp. 1909, Sec. (2097) 1.

Same—Straight bill of lading defined:—Whenever a bill of lading is issued by a carrier for the transportation of property from one place to another within this state, or between places one of which is within this state, in which the property described therein is stated to be consigned or deliverable to a specified person, without any statement or representation that such property is consigned or deliverable to the order of any person therein named. Such bill shall be known as a "straight bill of lading," and shall contain the following requirements:

(a) The bill shall be printed on white paper 8½ inches wide by 11 inches long.

(b) The bill shall have prominently stamped upon its face the words "not negotiable."

(c) Nothing herein shall be construed to prohibit the insertion in a straight bill of lading of other terms or conditions not

inconsistent with the provisions of this act; but it shall be unlawful to insert in such bill any terms or conditions contrary to or inconsistent with such provisions. *Id.* Sec. (2097) 2.

Same—Penalty for violating requirements:—Every carrier, or officer, agent or servant of a carrier, who shall knowingly violate any of the requirements stated in subdivisions (a), (b), (c), (d), or (e) of section 1 (2097-1) and in subdivisions (a), (b), or (c) of section 2 (2097-2) shall be guilty of a misdemeanor and punishable by fine of not more than one thousand dollars or imprisonment not more than one year, or both. *Id.* Sec. (2097) 3.

Same—Issue of false bill or unmarked duplicate unlawful:—It shall be unlawful for any carrier, or for any officer, agent or servant of a carrier, to issue an order bill of lading or a straight bill of lading, as defined by this act, until the whole of the property as described therein shall have been actually received and is at the time under the actual control of such carrier, to be transported or to issue a second or duplicate order bill of lading or straight bill of lading for the same property, in whole or in part, for which a former bill of lading has been issued and remains outstanding and uncancelled, without prominently marking across the face of the same the word "duplicate." *Id.* Sec. (2097) 4.

Same—Penalty and civil liability for violation:—Every carrier, or officer, agent or servant of a carrier, who knowingly violates the provisions of section 4 (2097-4) of this act and every person who negotiates or transfers for value a bill of lading known by him to have been issued in violation of said section 4 (2097-4) shall be guilty of a misdemeanor and upon conviction shall be punished by fine not exceeding five thousand dollars or imprisonment not exceeding five years, or both. And every carrier who himself, or by his officer, agent or servant authorized to issue bills of lading, issues a false or duplicate bill of lading in violation of the provisions of section 4 (2097-4) of this act, shall be estopped, as against all and every person or persons injured thereby who shall acquire any such false or duplicate bill of lading in good faith and for value, to deny the receipt of the property as described therein, or to assert that a former bill of lading has been issued and remains outstanding and uncancelled for the same property, as the case

may be; and such issuing carrier shall be liable to any and every such person for all damages, immediate or consequential, which he or they may have sustained because of reliance upon such bill, whether the person or persons guilty of issuing or negotiating such bill shall have been convicted under this section or not. *Id.* Sec. (2097) 5.

Same—Penalty upon shipper without title:—Every person who receives from a carrier and fraudulently negotiates for value an order or straight bill of lading representing property to which he had no, or an encumbered title, at the time of the negotiation of such bill, shall be guilty of a misdemeanor and upon conviction shall be punished by fine not exceeding five thousand dollars or imprisonment not exceeding five years, or both. Provided, however, that it shall be a full and complete defense to any prosecution under this act that any person, corporation or copartnership accused has complied with the requirements of any law of the United States hereafter enacted by the Congress of the United States relating to uniform bills of lading. *Id.* Sec. (2097) 6.

Same—Surrender of order bill:—It shall be unlawful for any carrier, or officer, agent or servant of a carrier, to deliver the property described in an order bill of lading without requiring surrender and making cancellation of such bill, or in case of partial delivery, indorsing thereon a statement of the property delivered; provided, that in lieu of such delivery, it shall be unlawful for the carrier, or his officer, agent or servant in his behalf, to take from the person to whom such property is delivered a good, sufficient and valid bond in the sum double the value of the property, conditioned that such person shall, within a reasonable time thereafter, deliver to the carrier the original order bill of lading issued for said property or shall pay the value of said property to the carrier upon demand, and upon the execution and delivery of said bond as aforesaid, it shall be lawful for the carrier, or his officer, agent or servant to deliver the goods to the person claiming title thereto, without requiring the immediate surrender of said order bill of lading. Every carrier, or officer, or servant of a carrier, who knowingly violates the provisions of this section, shall be guilty of a misdemeanor and upon conviction shall be punished by fine not exceeding five thousand dollars or imprisonment not exceeding five years, or

both. And every carrier who by himself, or by officer, agent or servant authorized to deliver goods upon surrender of an order bill of lading, violates the provisions of this section, shall be estopped as against all and every person or persons injured thereby who shall acquire in good faith and for value any such order bill of lading, from asserting that the property as described therein, has been delivered; and such delivering carrier shall be liable to any and every such person for all damages, immediate or consequential, which he or they may have sustained because of reliance upon such bill, whether the person or persons violating this section have been convicted of such violation or not. Provided, that the provisions of this section shall not apply where the property is replevined or removed from the possession of the carrier by operation of law; or has been lawfully sold to satisfy the carrier's lien; or in case of sale or disposition of perishable, hazardous or unclaimed goods in accordance with law or the terms of the bill of lading. *Id.* Sec. (2097) 7.

Alteration:—Any material alteration, addition or erasure in or to an order bill of lading or a straight bill of lading, fraudulent or otherwise, shall be without effect and in the hands of a bona fide holder for value, not a party to the alteration thereof, such bill shall be valid and may be enforced according to its original tenor. Provided, however, that an alteration, addition or erasure in or to any such bill of lading with signature thereto indorsed thereon, by the issuing carrier, or his officer, agent or servant in his behalf, and with the consent of the holder thereof, shall be valid and effective. *Id.* Sec. (2097) 8.

Overloading grain cars:—Every railway company shall place painted lines inside of each of its cars used for the carriage of grain, indicating the height to which the various kinds of grain can be loaded therein, and no car shall be loaded with any kind of grain above its appropriate line. The person loading any such car shall state in the bill of lading, prior to its being signed by the agent of the railway company, that the car is loaded to or below such line, and such agent, before signing the bill, shall verify such statement. The bill of lading so signed shall be prima facie evidence of the loading, and no charges for loading in excess of the quantity so limited shall lie against such car. No railway company that fails to equip any car as aforesaid shall collect any charges for the transportation of grain in

said car above the regular tariff rates for carload lots. Every person who shall load any car above the appropriate line, and every agent of any railway company who shall refuse to sign any such bill of lading, shall be guilty of a misdemeanor and punished by a fine of not less than ten dollars nor more than twenty-five dollars. Rev. Laws, 1905, Sec. 2099.

General supervision by commission—Rules:—The commission shall exercise general supervision over the grain interests of the state, and of the handling, inspection, weighing, and storage of grain, and of the management of public warehouses, shall investigate all complaints of fraud or injustice in the grain trade, and may fix the charges of public warehousemen, and shall make all proper rules and regulations for carrying out and enforcing the provisions of this chapter, and of all laws of the state relating to such subjects. The commission may also furnish inspection and weighing service to private terminal warehouses on such terms as it shall deem proper. *Id.* Sec. 2100.

Sealing devices for scales—Duty of commission:—The railroad and warehouse commission, hereafter called the commission, is hereby authorized and directed to inspect all sealing devices made for the purpose of sealing scales known to be on the market, and to officially approve any device considered by the commission to be a proper and safe device to be used in the sealing of scales. Rev. Laws, Supp. 1909, Sec. (2100) 1.

Same—Sealing device, when required:—When directed to do so by the commission, any person or company owning and operating a scale under the jurisdiction of the commission is hereby required to install such scale with some sealing device which has the official approval of the commission. *Id.* Sec. (2100) 2.

Same—Failure to install—Tampering with device—Penalties:—Any person or company failing within thirty days after notice to install such sealing device when directed to do so by the commission, shall be subject to a penalty in the sum of one hundred dollars. It shall be a felony for any person to change, break or tamper with, or cause to be changed, broken or tampered with, the sealing device or sealing thereof after the same has been properly installed and inspected by some authorized agent of the commission. *Id.* Sec. (2100) 3.

Shipper to affix tags:—Every shipper of grain shall fasten upon the inside of each car shipped by him a card giving the number and initials or other distinctive mark of such car, the date of shipment, and the exact weight of the grain in such car, as claimed by the shipper. If he fail so to do, the official weight shall be prima facie evidence of the quantity of grain shipped in such car. Rev. Laws, 1905, Sec. 2101.

Breaking seals:—Any person who, without legal authority, shall break or remove any seal upon any car loaded with grain, or otherwise break or enter such car, shall be guilty of a misdemeanor. *Id.* Sec. 2102.

Violation of provisions of this subdivision:—Any person who shall violate any of the provisions of this subdivision, where no specific penalty is prescribed, shall be guilty of a gross misdemeanor, and punished by a fine of not less than fifty dollars nor more than five hundred dollars. Any corporation which shall violate any such provision shall forfeit to the state, for each violation, not less than fifty dollars nor more than five hundred dollars. *Id.* Sec. 2103.

Grain includes flax seed:—The term "grain" wherever used in this subdivision shall be held to include flax seed. *Id.* Sec. 2104.

Warehouse receipts—Numbering:—All warehouse receipts for grain issued by the same warehouse shall be consecutively numbered, and no two receipts bearing the same number shall be issued from the same warehouse during any one year, except in case of a lost or destroyed receipt, in which case the new receipt shall bear the same date and number as the original and shall be plainly marked on its face "Duplicate." *Id.* Sec. 2105.

Inspection and weighmaster's certificates:—Every elevator company, corporation, co-partnership, association or individual, operating any elevator, building or place in this state for the purchase, storage or deposit of any grain or other farm commodity, shall be entitled to receive from, and shall demand of, the officer whose duty it is to issue the same, the official certificate of inspection in duplicate, together with the weighmaster's certificate in duplicate for any grain or other farm commodity shipped from any such elevator, building or place and inspected and weighed as provided by the laws of the state. Rev. Laws, Supp. 1909, Sec. (2105) 1.

Same—Duplicate to be delivered to buyer, etc.:—Within ten days from the delivery of any such certificate as provided in section one (2105-1) of this act, the company, corporation, co-partnership, association or individual receiving the same shall deliver to the local buyer at the place where such grain or other farm commodity is purchased, stored or deposited, one of said duplicate certificates and the same shall be retained by such local buyer in his office or place of business for thirty days thereafter and be subject to examination by any person or persons desiring to inspect same. *Id.* Sec. (2105) 2.

Same—Failure to deliver—Penalty:—Any company, corporation, co-partnership, association or individual mentioned in section one (2105-1) of this act, who shall fail to deliver any certificate mentioned in this act within the time and as provided in section 2 (2105-2) of this act, shall be guilty of a misdemeanor, and the weight and grade of the grain or other farm commodity, as shown by the records of the local buyer, shall be taken as a basis of settlement between the local buyer of any such grain or farm commodity and the company, corporation, co-partnership, association or individual failing to deliver said certificate. *Id.* Sec. (2105) 3.

Use of right of way for warehouse:—Any person shall have the right to use, as a site for a public warehouse, a proper portion of the right of way of any railroad, within the outside switches at any station or siding, upon the payment of reasonable compensation. Rev. Laws, 1905, Sec. 2106.

Application:—Whoever wishes to exercise such right may make written application to the person or company operating such railroad for such site, describing it, stating the size and capacity of the proposed warehouse, the station or siding at which it is to be built, the time for which such site is desired, and the amount of compensation the applicant is willing to pay. *Id.* Sec. 2107.

Acceptance or rejection of offer:—Within ten days after the receipt of such application, the operator of such railroad shall notify the applicant in writing of his acceptance or rejection of the compensation offered. If he fail so to do, he shall be deemed to have accepted the same. Upon acceptance and payment or tender of the compensation, the applicant shall thereupon be entitled to the site described. *Id.* Sec. 2108.

Proceedings on rejection:—If the offer be rejected, and the parties fail to agree on compensation, the applicant may present to and file in the district court of the county a verified petition, setting forth the making of the application, with a copy thereof, the compensation offered, its rejection, and the failure of the parties to agree. The court shall thereupon by order fix a time and place for hearing such petition, not more than thirty days from its presentation. Such order shall be served as a summons in said court is served, at least twenty days before the time set for such hearing, which service shall give the court jurisdiction of both person and property. *Id.* Sec. 2109.

Trial:—If such hearing be set at a time other than a term of court where a petit jury is in attendance, the court, unless a jury be waived, shall order the selection of twenty-four jurors from the list returned by the county board in the manner provided for drawing jurors for a general term of such court, and the case shall be tried as other civil actions, and the compensation to be paid shall be assessed, both as a gross sum and an annual rental. The respondent shall elect either to receive the gross sum or the annual rental, and, if he fail to elect, the petitioner may do so, and judgment shall be entered accordingly. *Id.* Sec. 2110.

Appeal:—Either party may appeal as from a judgment in a civil action within thirty days from the entry of judgment; but such appeal shall not stay the right of the petitioner to use the site designated, if the petitioner shall give bond with sureties approved by the court, in double the gross sum or annual rental fixed by the judgment, conditioned to pay such sum or rental, and abide and satisfy any judgment the supreme court may render in the premises. *Id.* Sec. 2111.

Costs:—If the amount fixed by the final judgment be more than that offered in the application, the respondent shall recover costs and disbursements as in a civil action; otherwise, the petitioner. *Id.* Sec. 2112.

Abandonment:—If the compensation, as finally fixed or agreed upon, be not paid within thirty days after the amount is finally settled, or if the applicant shall not begin the erection of such warehouse within two months, and complete the same and open it for business as a public warehouse within five months,

after designation of the site, the application shall be deemed abandoned. *Id.* Sec. 2113.

Certificates on products:—Every person engaged in the slaughter of cattle, sheep or hogs, and dealing in the products thereof, who owns or controls the building wherein such business is conducted or such commodities stored, may issue warehouse certificates for any of the commodities actually in store, and may sell, assign, transfer, pledge or incumber the same to the amount described therein. Such certificate shall contain the name and address of the person issuing it, the location of the warehouse, the date of issue, the quantity of each commodity, and its brand or mark of identification, if any, and be signed by the person issuing the same. *Id.* Sec. 2121.

Interest in warehouse—Certified copy:—Before issuing any such certificate, he shall file with the register of deeds of the county, where the warehouse is located a written declaration, stating his name and residence, that he intends controlling a warehouse for the storage and sale of such commodities, a correct description of the warehouse, its location, and the name of any other person in any way interested therein. It shall be signed, acknowledged, and recorded in a book kept for that purpose, and a certified copy thereof shall be filed with the clerk of the city, village, or town wherein such business is conducted, and be kept in the same manner as chattel mortgages are required to be filed and kept, and the party making the declaration shall be indexed as the vendor, and the public as the vendee. *Id.* Sec. 2122.

Statement printed on back:—Every such certificate issued shall have printed on the back thereof a statement that the party issuing it has complied with the law, and shall give the book, page, and place where the record of such declaration may be found, and the day of filing. Such certificate, when so issued and delivered, shall transfer to the holder the title to the commodities therein described, shall be assignable by indorsement, and thereupon shall be prima facie evidence of title to such commodities in the indorsee. It shall be registered by the party issuing the same in a book kept for that purpose, which shall show the date, number, and name of party to whom issued, the kind and quantity of the commodities, and any brands or marks thereon, and be open to inspection by any person holding any outstanding certificate in force, his agent or attorney; and when

the commodity specified therein has been delivered, or it has in any other manner become inoperative, that fact, with the date of such delivery or other termination of liability, shall be entered in the register in connection with the entry of its issuance. *Id.* Sec. 2123.

Property in warehouse:—No person shall issue such warehouse certificate unless the property therein described is actually in the warehouse; and it shall remain there until otherwise ordered by the holder of the certificate, subject to the conditions of the contract between the warehouseman and the person to whom such certificate was issued, or his assigns, as to the time of its remaining therein; and no second certificate shall be issued for the same property or any part thereof while the first is outstanding and in force, nor shall the property be sold, incumbered, shipped, transferred or removed by the warehouseman without the written consent of the certificate holder. *Id.* Sec. 2124.

Damages for injury:—Any person injured by any violations of Sections 2123, 2124 may recover the actual damages sustained, and, if the violation was wilful, in addition thereto exemplary damages not exceeding double the actual damages, which shall be found by special verdict. *Id.* Sec. 2125.

Penalties:—Every person who shall wilfully alter or destroy any register of such certificates; or issue any receipt of certificates without entering and preserving in such book the registered memorandum; or shall knowingly issue any such certificates when the commodities therein described are not in the warehouse; or who, with intent to defraud, shall issue a second or other certificate for which a former valid certificate is outstanding; or who shall, under such circumstances, sell, incumber, ship, transfer, or remove from the warehouse any such certified property, or knowingly permit the same to be done, without the written consent of the certificate holder, or who knowingly receives, or helps to remove, any such property, shall be guilty of a felony, and punished by imprisonment in the state prison for not more than five years, or by a fine of not more than ten thousand dollars. *Id.* Sec. 2126.

For keeping, repairing, etc.:—Whoever at the request of the owner or legal possessor of any personal property shall store or care for or contribute in any of the modes mentioned in the

next section to its preservation, care, or to the enhancement of its value, shall have a lien upon such property for the price or value of such storage, care or contribution, and for any legal charges against the same paid by such person to any other person, and the right to retain the property in his possession until such lien is lawfully discharged; but a voluntary surrender of possession shall extinguish the lien herein given. Rev. Laws, Supp. 1909, Sec. (3523) 1.

For what given—Such lien and right of detainer shall exist for:

1. Transporting property from one place to another as a common carrier or otherwise;

2. Keeping or storing property as a warehouseman or other bailee;

3. Keeping, feeding, pasturing, or otherwise caring for domestic animals or other beasts, including medical or surgical treatment thereof and shoeing the same;

4. Making, altering or repairing any article, or expending any labor, skill or material thereon.

Such liens shall embrace all lawful charges against such property paid to any other person by the person claiming such lien, and the price or value of such care, storage or contribution and all reasonable disbursements occasioned by the detention or sale of the property. *Id.* Sec. (3523) 2.

Sale:—If any sum secured by such lien be not paid within ninety days after it becomes due, the lien holder may sell the property and out of the proceeds of such sale there shall be paid, first, the disbursements aforesaid, and, the second, all charges against said property paid by such person to any other person, and, third, the total indebtedness then secured by the lien. The remainder, if any, shall be paid on demand to the owner or other person entitled thereto. *Id.* Sec. (3523) 3.

Sale, when and where made—Notice:—The sale herein provided for shall be made at public auction between 9 o'clock in the morning and 5 o'clock in the afternoon in the county where the property or some part thereof is situated. A notice stating the time and place of sale, the amount which will be due on the date of sale exclusive of the expenses of advertising and sale, and the grounds of the lien, giving a general description of the property to be sold, shall be served personally upon the owner

of the property if he can be found within the county in which said property is stored, and if he cannot, then it shall be mailed to the owner thereof at least three weeks before the time fixed for such sale if the place of residence or postoffice address of such owner is known to him or with due diligence can be learned by the person claiming such lien, and shall be published once in each week for three successive weeks in a newspaper printed and published in the county where said property or some part thereof is situated, the last publication of such notice to be at least one week prior to the date of sale; or, if there is no newspaper printed and published in the county, then said notice of sale shall be posted in three of the most public places in the county at least three weeks before the time of sale. In case neither the place of residence nor the postoffice address of such owner is known to the person claiming such lien and cannot with reasonable diligence be learned, the publication or posting of notice as herein provided shall be sufficient to authorize such sale. *Id.* Sec. (3523) 4.

Conduct of sale:—The property sold as herein provided shall be in view at the time of the sale. Under the power of sale hereby given enough of said property may be sold to satisfy the amount due at the time of sale, including expenses, and said property, if under cover, may be offered for sale and sold in the original packages in the form and condition that the same was received by the lien holder; but after sufficient property has been so sold to satisfy the amount so due no more shall be sold. The lien holder, his representatives or assigns, may fairly and in good faith purchase any property sold under the provisions of this act, provided the sale is conducted by the sheriff, his deputy, or any constable of the county where such sale is made. *Id.* Sec. (3523) 5.

Larceny—What constitutes:—Every person who, with intent to deprive or defraud the true owner of his property, or of the use and benefit thereof, or to appropriate the same to the use of the taker, or of any other person * * * Having in his possession as storage, forwarding or commission merchant, carrier, warehouseman, factor, or broker, or as the clerk, agent, or employee of any such storage, forwarding, or commission merchant, carrier, warehouseman, factor, or broker, with intent to defraud, shall sell or in any way dispose of, or apply or con-

vert to his own use or the use of any other person, any bill of lading, customhouse permit, or warehouse receipt intrusted or consigned to him, or the proceeds or profits of the sale of any such property, or shall fraudulently fail to pay over any such proceeds after deducting charges or usual commission; and any consignor of any property or his agent, not being the absolute owner thereof, who, with intent to defraud, after delivery thereof for transportation on any wharfboat, water craft, vehicle, or to any common carrier, shall in any way stop, countermand, or change the consignment thereof, or shall sell, dispose of, or incumber such property, during transit, after the delivery thereof, or shall in any way convert the same to his own use or the use of any other person than the true owner thereof or the person entitled to the benefit thereof; and every person or officer of any corporation who having given a receipt for agricultural products, or any goods, wares or merchandise, whether such receipt shall have been given to the owner of said property or issued as security on the same, shall sell, dispose of, incumber, or in any way convert the same or any part thereof to his own use, or to the use of any person other than the one entitled thereto or to the benefit thereof * * * steals such property, and shall be guilty of larceny. Rev. Laws, 1905, Sec. 5078, sub. sec. 3.

See sections 5081 to 5083, inclusive, for definitions of the different degrees of larceny.

Fictitious warehouse receipts:—Every person carrying on the business of a warehouseman, wharfinger, or other depositary of property, who shall issue any receipt, bill of lading, or other voucher for grain or merchandise of any kind which has not been actually received upon the premises of such person, and is not under his actual control at the time of issuing such instrument, whether the same shall be issued to a person as owner, or as security for any indebtedness, shall be punished by imprisonment in a county jail for not more than one year, or by fine of not more than one thousand dollars, or by both; but no person shall be convicted under this section or section 5121 for the reason that the contents of any barrel, box, case, cask, or other vessel or package mentioned in the bill of lading, receipt, or other voucher did not correspond with the description contained in such instrument, if such description corresponds substantially with the mark, label, or brand upon the outside of such vessel or package, unless

it appears that the defendant knew that such marks, labels, or brands were untrue. Rev. Laws, 1905, Sec. 5122.

Duplicate receipts—Selling stored property, etc.:—Every person mentioned in sections 5121, 5122, who shall issue any second or duplicate receipt or voucher of a kind specified in said sections, while a former receipt or voucher for the grain or merchandise specified in such second receipt is outstanding and uncancelled, without writing across the face of the same the word "Duplicate," in a plain and legible manner, and every such person who shall sell or pledge any merchandise for which a bill of lading, receipt, or voucher has been issued by him, without the consent thereto in writing of the person holding such bill, receipt, or voucher, shall be punished by imprisonment in a county jail for not more than one year, or by fine of not more than one thousand dollars, or by both. *Id.* Sec. 5123.

Person operating elevator to list:—Every person, firm or corporation operating a grain elevator or warehouse in this state shall at the time by law provided for the listing of personal property for taxation furnish to the assessor of the assessment district wherein such elevator or warehouse is situate a full and true list or statement of all grain, specifying the respective amounts and different kinds thereof received in or handled by such elevator or warehouse for and during the year immediately preceding March 1st of such year in which such list or statement is so to be made. Rev. Laws, Supp. 1909, Sec. (1038) 34.

Amount of tax:—Every such person, firm or corporation shall in lieu of all other taxes upon such grain pay thereon one-fourth of one mill per bushel upon all wheat and flax and one-eighth of one mill per bushel upon all other grain received in or handled by such elevator or warehouse during such preceding year. *Id.* Sec. (1038) 35.

How levied, paid and distributed:—Such tax shall be levied, paid and collected, and distributed in the same manner as other taxes on personal property are levied, paid, collected and distributed in the county wherein such elevator or warehouse is situated. *Id.* Sec. (1038) 36.

Refusal to list—Assessment:—If any such person, firm or corporation fails or refuses to so make such list or statement at the time above provided, the assessor shall deliver a statement

in writing showing such failure or refusal to the county board of equalization of such county and thereupon the said county board of equalization shall place upon the assessment rolls such amount of such grain as to them may seem just and proper. *Id.* Sec. (1038) 37.

Right of inspection:—For obtaining information regarding suspected violations of law, the commissioner and his employees shall have access to all places where any article of food or other article the manufacture or sale of which is restricted, regulated or prohibited by this chapter, is or may be manufactured, prepared, stored, kept for sale or sold, or where cows or other animals are pastured or stabled, to cars or other carriages used for transportation of such articles or animals, and to places where food is or may be cooked, prepared, sold or kept for sale to or for the public, or distributed as a part of the compensation of servants and agents, including public and private hospitals, lumber and railroad camps, inns, boarding and eating houses, drinking places, dining cars, boats and other places where any of said articles may be sold, and they may inspect any package or receptacle found therein apparently containing any article of food or ingredient thereof, or any other article the manufacture or sale of which is restricted, regulated or forbidden by this chapter, and may take samples therefrom for analysis. Any person obstructing such entry or inspection, or failing upon request to assist therein, shall be guilty of a misdemeanor. Rev. Laws, 1905, Sec. 1736.

Access to railroad cars, warehouses, etc.—Powers of commissioner—Duties of carriers and warehouseman:—For the proper enforcement of the laws of this state, already or hereinafter enacted, which may be designed to prevent, regulate or punish the sale or use of commodities for human consumption which are deleterious to health and not true in name, the dairy and food commissioner, by himself, or employes of his department in addition to having the authority and powers otherwise conferred by law is authorized and empowered to have and take access to any and all railroad cars of every sort or nature transported or being within this state, all railroad stations, storage houses, warehouses, or express offices, or other places wherein there may at any time be commodities shipped within this state from without designed for human consumption whether such

commodities have been sold or given away without the state, provided such sale or gift was or is with the intent that such commodities be delivered, had or used within the state, and the dairy and food commissioner by himself or the employees of his department shall have the same power and authority to open any package, can or vessel, so shipped within this state from without, which contains or which he has reason to believe contains any such commodity to inspect the contents thereof and to take samples therefrom for analysis, all after the same manner and with the same procedure as obtains by law in reference to similar commodities manufactured, sold or exposed for sale within the state. If it shall appear that any such commodity or commodities so shipped within this state from without is of a character or composition, the manufacture, sale or exposing for sale of which within the state is forbidden by any laws then in force as deleterious to health and not true in name, the dairy and food commissioner shall have the same rights and remedies, and shall enforce such rights and remedies against such commodity or commodities in the same manner as in the cases of similar commodities when manufactured, sold or exposed for sale within the state. On receiving notice from the commissioner, or any authorized employe of his department that he desires to inspect the contents of any such package, can or vessel, containing, as he believes, any such commodity, it shall be the duty of any common carrier, or warehouseman or their employes, or other person having the same in his possession, or under his control to withhold the same from delivery within this state such time as may be reasonably necessary for the inspection and analysis thereof. It is further made the duty of all common carriers and warehousemen and employes thereof to render the commissioner and his employes all the assistance in their power when so required to effectuate the purpose of this act. In case such inspection or analysis of any such commodity shall disclose therein ingredients deleterious to health and not true in name, as defined by any law of this state, such common carrier or warehouseman, or employes thereof, shall on demand disclose to the commissioner the names and addresses of the consignor and consignee of the package, can or vessel containing the same and the commissioner shall, before proceeding further, as against such commodity, notify such consignor and consignee in writing at their respective addresses as so disclosed of the results of

such inspection and analysis. Any failure on the part of any common carrier, warehouseman, storage man, or employe thereof, to do or observe the provisions hereof shall be a misdemeanor. Rev. Laws, Supp. 1909, Sec. (1736) 1.

DECISIONS AFFECTING WAREHOUSEMEN

A.

Bailment and sale. Where a party delivers or deposits grain with another, with an agreement, express or implied, that the latter may use and dispose of it, and fulfill his obligations to the former by returning an equal amount of other grain of the same quality, the transaction, in the absence of a statute changing the rule, is a sale and not a bailment. *Fishback* v. *Van Dusen & Co.*, 33 Minn. 110. (Note. The party receiving the wheat for storage was not a "warehouseman." See *Nat. Ex. Bank of H.* v. *Wilder,* 34 Minn. 149, modifying certain dicta in above case and distinguishing the same.) See also *Weiland* v. *Krejnick*, 63 Minn. 314; *Weiland* v. *Sunwall*, 63 Minn. 320.

Same—Right to sell at any time—Sale:—In an action against a warehouseman to recover the value of wheat deposited with him, the evidence showed that it was the invariable custom at the warehouses in the city to mingle together all the grain of the same grade, and that this was done with the knowledge of the depositors, and that, if a depositor should demand the wheat, instead of the value, he would not receive, unless by accident, any of the identical wheat deposited by him. The evidence further showed that it was unusual for the depositor to demand a return of the wheat, as he almost always choose to take the value thereof at the date on which he surrendered the receipt and closed the transaction. *Held* that such a contract constituted a sale and not a bailment. *Rahilly* v. *Wilson*, 3 Dillon, 420.

Same—Option to buy:—A receipt for grain placed in store, which in all other respects constituted a bailment, contained the following: "The conditions on which this wheat is received at this elevator are that Rieger (the warehouseman) has this option: either to deliver the grade of wheat that this ticket calls for, or to pay the bearer the market price for the same, less elevator charges, on surrender of this ticket." *Held* that this did

not render the contract one of sale. It merely gave the warehouseman an option to buy when the receipt was presented. This option he could only exercise when the receipt was presented, and by paying the money. *State of Minnesota* v. *Rilger,* 59 Minn. 151; *State* v. *Cowdery,* 79 Minn. 94.

B.

Ordinary care—Evidence of custom not conclusive as to such care having been exercised:—The following *held* to be correct instruction given by the court, to the jury, in defining the degree of care to be exercised by a warehouseman: "That by ordinary care is meant that care which a person of common prudence takes of his own concerns, or that degree of care which men of common prudence exercise about their own affairs in the age and country in which they live; that in determining what would be ordinary care in this particular case, reference must be had as to the actual state of society, the business habits, and general usage peculiar to the time and country. That what is done by men of ordinary prudence in any particular country in respect to things of a like nature, whether it be more or less, in point of diligence, than what is exacted in another country, becomes in fact the general measure of diligence. But the evidence of customs of railroads given in this case is merely evidence to go to the jury for what it is worth. It is not conclusive." *Derosia* v. *The Winona & St. Peter R. R. Co.,* 18 Minn. 133.

Rights of depositors—Title to goods—Commingling grain:—A deposit of grain for storage is a bailment, the title remaining in the depositor, so that he is deemed to be the owner of the grain in the warehouse to the amount of his deposit, although the identical grain he deposited has been removed, and other grain, of like kind and quality, substituted in its stead. *Hall* v. *Pillsbury et al.,* 43 Minn. 33.

Demand on agent in charge of warehouse, proper:—An agent lawfully in charge of the business of a warehouse in which goods, the title to which is in dispute, are deposited is the proper party upon whom to make demand for the delivery thereof, by the person claiming title thereto. *Lundberg* v. *Northwestern Elevator Co.,* 42 Minn. 37.

Conversion—Sale by warehouseman—Owners may follow goods:—If a warehouseman sell as his own, out of a common

mass of grain in his warehouse, any in excess of that which he personally has stored there, it is a conversion, his sale passes no title and the owners, the depositors, may follow the grain into the hands of the purchaser and recover of him. *Hall* v. *Pillsbury et al.*, 43 Minn. 33.

Same—Same—Fraudulent sale by warehouseman—Equity:—A warehouseman received wheat, for storage, from different depositors, and mingled the same in a common mass, issuing receipts for the same to the various owners. The warehouseman, after having fraudulently sold a large quantity of the wheat, absconded. The creditors thereupon attached all the wheat remaining in the warehouse. In an action of replevin, brought by one holding a majority of the receipts, against the sheriff, in which he claimed that he was entitled to all of the property remaining in the warehouse, the court *held* that he was not so entitled; that no one of such receipt holders could recover, at law, the whole amount, nor could any number of such holders, less than all of them, recover the whole amount stored. The court further *held* that it was a case to be brought in equity. *Hammergen* v. *Schuermier et al.*, 1 McCrary, 434; *Greenleaf et al.* v. *Dows & Co.*, 8 Fed. Rep. 550.

Same—Wrongful shipment by warehouseman of grain stored—Demand by receipt holder:—A demand by the holder of a warehouse receipt for grain deposited for storage, for the amount represented by the receipt, is good notwithstanding that, by reason of removal of grain by the warehouseman, there is not enough left in store to answer all the receipts. *Lenthold et al.* v. *Fairchild et al.*, 35 Minn. 99.

Same—Same—Liability of agent, knowingly aiding in the wrong:—The agent of a warehouseman, who assists him in wrongfully disposing of the wheat, knowing that he is doing it wrongfully, is liable to the owners of the wheat. *Id.*

H.

Tender of storage charges—Waiver:—It is competent for a bailee of grain held in store to waive the formal requisites of a tender of charges and grain receipts provided for by Gen. St. 1878, ch. 124, sec. 15. *Wallace* v. *Minneapolis & Northern Elevator Co.*, 37 Minn. 464; *Tarbell* v. *Farmers' Mutual Elevator Co.*, 44 Minn. 471.

Ground of refusal—Estoppel:—Where a bailee places his refusal to deliver stored grain solely on the ground that it is claimed by a third party, he will not be permitted subsequently to change his position, and justify such refusal on the ground that his charges are not paid. *Wallace* v. *Minneapolis & Northern Elevator Co.*, 37 Minn. 464.

Excessive sale for storage charges—Conversion—Burden of proof:—A large number of articles were deposited by plaintiff with defendant for storage, the charge for storage to be two dollars per month. After the storage for the first month had been due for more than three months, the defendant advertised and sold article by article, all the goods, under the provisions of laws, 1889, ch. 1999. Enough was realized to more than pay the charges overdue for three months and expenses of the sale. The action being for conversion, *held* that the right to sell ceased as soon as the sale had produced enough to satisfy the charges overdue three months and expenses of sale, and all articles sold after that were illegally sold; and it was for defendant to show what articles were sold before the right to sell ceased, and, there being no evidence on this point, plaintiff was entitled to recover the value of all the articles. *Jesurun* v. *Kent*, 45 Minn. 222.

Warehouseman's lien for his charges and for freight, distinguished:—The lien of a warehouseman upon goods for warehouse charges, and the lien of a warehouseman upon goods for money advanced for freight charges, depend upon different principles of law. A warehouseman who receives goods from a steamboat in the carrying trade, and pays to such boat the freight charges, does not by reason of such payment obtain a lien upon the goods. *Bass & Co.* v. *Upton*, 1 Minn. 408.

Storage charges—Pledge for money advanced—Sale for:—A warehouseman having liens for storage charges and the right to sell, and also holding the warehouse receipt as security for money advanced to the owner, should secure for the benefit of the owner of the property all that could be obtained to satisfy not only all charges, but for all valid liens under the pledges he holds. *Webb* v. *Downes*, 93 Minn. 457, 461.

Contract of storage—Evidence—Correspondence:—The complaint herein alleged that the plaintiff sold and delivered, at

French, Minn., to the defendant, a quantity of wheat, for which it agreed to pay, at any future time when demanded, the then market price of wheat at Duluth or Minneapolis, less thirteen cents per bushel. *Held* that certain correspondence between the parties did not establish such contract. *Wemple* v. *Northern Dakota Elevator Co.*, 67 Minn. 87.

I.

Grain in mass—Receipt holders tenants in common—When warehouseman tenant in common:—Where the grain of several depositors is deposited in a common mass, the receipt holders are tenants in common of the mass, the interest of each being limited to the amount called for by his receipt. The warehouseman too may be a tenant in common; if he has grain in the mass his interest is limited to the excess above what is necessary to meet his outstanding receipts. *Hall* v. *Pillsbury*, 43 Minn. 33; *Nat. Ex. Bank of H.* v. *Wilder*, 34 Minn. 149.

M.

Pledge—Constructive possession—Warehouse receipt:—While possession by the pledgee is necessary to the existence and continuance of a pledge, yet this need not be actual physical possession. The delivery of a recognized symbol of title, such as a warehouse receipt, which puts the pledgee in control and constructive possession of the property, is sufficient. *Nat. Ex. Bank of H.* v. *Wilder*, 34 Minn. 149.

Same—Commingled wheat:—Where the pledged property is part of a larger uniform mass, as wheat in an elevator, separation from such uniform mass is not necessary to constitute an appropriation of the property to the contract of pledge. The pledgee becomes tenant in common with the other owners. *Id.*

Same—Substitution of other grain by warehouseman (pledgor):—Where a warehouseman has pledged the warehouse receipts for his own wheat stored in his own warehouse, which wheat is commingled with that of his customers, and in the course of his business ships out the specific grain pledged and purchases and stores in his warehouse other grain of the same kind and quality, the latter, by virtue of the provisions of the statute (ch 86, Laws of 1876), takes the place of the former,

and is appropriated to the contract as the property of the pledgee or depositor. *Id.*

N.

Loss by fire—Non-delivery due to a warehouseman's negligence—Liability:—If, by the negligence of a warehouseman, the owner of goods stored with him is unable to obtain possession thereof, and, as a consequence, the goods remain with the warehouseman and are afterwards burned, although without the fault of the warehouseman, it was *held* that this was a direct consequence of the warehouseman's default, and he is liable therefor. *Derosia* v. *The Winona & St. Peter R. R. Co.*, 18 Minn. 133.

Same—Removal of goods contrary to agreement—Bailee liable:—Where goods, which have been removed by the bailee from an agreed to another place of storage without notice to or consent of the bailor, are destroyed by fire the bailee is liable for the reasonable market value of the goods. *McCurdy* v. *Wallblom Furniture & Carpet Co.*, 94 Minn. 326, 328.

Negligence—Decay of apples in cold storage—Jury:—Where plaintiff stored apples in the cold storage warehouse of defendant and there was sufficient evidence of negligence on the part of defendant to justify the verdict in favor of plaintiff; it was *held* such verdict will not be set aside on appeal, and further, that the question of negligence was properly one for the jury. *Townsend* v. *Rich*, 58 Minn. 559.

Same—Injury in cold storage—Representations of warehouseman in newspaper advertisements received in evidence:—Action for damage to celery caused by temperature in defendant's warehouse not being kept at uniform degree. *Held:* That in view of conflict in the testimony, that the court did not err in admitting in evidence a certain newspaper advertisement published by defendant, which, after suggesting to the readers that they store butter and eggs with defendant, announced "uniform temperature" and "duplicate machinery." Also *held* that plaintiff, when discovering that the temperature was too high, notified the manager of the condition but did not remove the goods, was not guilty of contributory negligence. *Rettner* v. *Minn. Cold Storage Co.*, 88 Minn. 352.

Same—Rendering them insurers:—Defendants, warehousemen, received from the plaintiff, for storage, certain goods, she was to bear the risk from fire, and so had the goods insured in the warehouse. In contemplation of their removing the goods, at some indefinite time, to another warehouse, they agreed to give her notice when the goods were removed, so that she might have the insurance continued on them in such warehouse. Defendants removed the goods but failed to give notice to the plaintiff. By the removal the insurance became void. The goods were destroyed by fire. Defendants had no authority from plaintiff to make any arrangements for insurance. Defendants testified, but it was denied by the agent of the insurance company, that they informed such agent of the removal of the goods and that he promised to make the necessary change in the policy. *Held* that, conceding plaintiff, when informed of this after the fire, might have adopted or ratified what defendants testified to, as an agreement by the insurer to continue the policy, she was not bound to do so, and that though found by the jury to be as defendants testified, it was no defense to an action for neglecting to give notice of the removal. *Conover* v. *Wood*, 48 Minn. 438; *Brigham* v. *Wood*, 48 Minn. 344.

Same—Storage of cheese—Dripping brine pipes—Terms of receipt:—The defendant, a warehouse company, received from plaintiff a large amount of cheese for storage in its warehouse and issued to plaintiff a receipt, the conditions of which were as follows: "All property is to be at owner's risk of any loss or damage from riot, fire, water, deterioration, defective cooperage, packing, ratage, vermin, leakage, frost, or from being perishable or otherwise inherently defective when stored." The overhead brine pipes used by defendant in keeping a low temperature in its storage room were covered with ice, and the defendant negligently allowed the temperature in said room to rise so that the ice melted, and the water therefrom dripped down upon and greatly damaged plaintiff's cheese. *Held* that defendant was not exempt from liability for damage caused by its own negligence. *Minn. Butter & Cheese Co.* v. *St. Paul Cold Storage Warehouse Co.*, 75 Minn. 445.

Same—Burden upon warehouseman to show freedom from—When:—When the loss of stored goods is established the burden is upon the warehouseman of proving that the loss did not

occur through his negligence. This burden is not merely a burden of going forward with the evidence, but a burden of establishing by a preponderance of the evidence freedom from negligence. *Rustad* v. *Great Northern Ry. Co.*, 142 N. E., 727.

O.

Measure of damages—When conversion willful and when not —Rule stated:—Where the conversion of personal property is accidental and under the belief that the person has a right to the property, and he acts with no wrongful purpose or intent, the measure of damages is the value of the property at the time of the actual taking and conversion. But where the original taking and conversion is willful and without color or claim of right, the measure of damages is the value of the property at the time and in the condition in which it is, when demand for its return is made. *Dolliff* v. *Robbins*, 83 Minn. 498.

Q.

Warehouse receipts—Expressed conditions as to payments to be made—Notice to purchaser:—In certain warehouse receipts, issued to a third party and purchased by the plaintiff, there appeared a clause whereby the warehouseman stipulated to deliver a specified number of gallons of whiskey on return of the receipts and "payment of the whiskey, the United States government and state tax, interest and charges." *Held* that although the words "payment of the whiskey" were indefinite and ambiguous, it was obvious that a prepayment of some character was required in addition to the government and state tax, interest and charges. By the use of this language the plaintiff was notified of an infirmity in the receipts, and he was bound to inquire its meaning or, failing to do so, suffer the consequences. *Stein* v. *Rheinstrom et al.*, 47 Minn. 476.

Same—Construction of—Advanced charges:—A warehouse receipt stated that the property was deliverable "on payment of charges" without stating their nature or amount, the spaces for the insertion of the amount of "storage" and "advanced" charges respectively being left blank. *Held* that this was sufficient to put a purchaser of the property upon inquiry as to the amount and character of the charges, and that the warehouseman was not estopped, as against such purchaser, from as-

serting his lien for "advanced" charges. *Security Bank of Minnesota* v. *Minneapolis Cold Storage Co.*, 55 Minn. 107.

Same—Same—Contract of insurance in:—A storage receipt for wheat delivered at a public elevator, after stating the rate of storage, contained the following clause: "This charge for storage shall cover the loss by fire only; all other damage by the elements, or by heating or riot, or by the act of God, or which in any way has been caused by the holder of this receipt, shall be excepted." *Held* this, by implication, constituted a contract of insurance by the warehouseman against loss by fire. *Thompson* v. *Thompson*, 78 Minn. 379.

Same—Same—Modification of contract:—Further *held* in above case that by a subsequent agreement modifying the contract so as to provide that no charge should thereafter be made for storing the grain, this implication as to insurance dropped out and thereafter the warehouseman was not such insurer. *Id.*

Same—Rate of storage:—The storage receipt provided that the rate of storage "shall not exceed four cents for six months." *Held* this was intended to fix the rate of storage and not the duration of the bailment. *Id.*

Same—Right given to commingle grain does not include right to sell:—In a warehouse receipt it was stated that express authority was given the warehouseman to mingle the grain with that of other persons and also to ship the same to other elevators. It was held that such provisions did not authorize the warehouseman to dispose of such grain by sale. *State* v. *Cowdery*, 79 Minn. 94.

Same—Written parts control printed:—In a contract for the storage of wheat by which a warehouseman had authority to sell, there was an inconsistency or conflict between the written and printed parts thereof; it was *held* that the written parts controlled. *Murray* v. *Pillsbury*, 59 Minn. 85.

Same—Estoppel by:—Where a warehouseman has issued a negotiable receipt, he is estopped to deny that he has received the goods, in an action brought against him for their value by an assignee thereof. *M'Neil* v. *Hill*, 1 Woolworth, 96.

Same—Irregular in form:—Plaintiff stored wheat with defendant, receiving memorandum tickets therefor. It was held

"While the railroad and warehouse commissioners are given power to prescribe the forms of wheat receipts and storage tickets . . . it by no means follows that warehousemen may not, as between themselves, and wheat owners, accept grain for storage upon such terms as they see fit." But the warehouseman cannot, because the receipts were not in statutory form, take advantage of that fact and retain the wheat. *Kramer* v. *N. W. Elevator Co.*, 91 Minn. 346.

Same—Pledge by warehouseman:—The owner of goods, *if a warehouseman*, can pledge the same by issuing and delivering his own warehouse receipt to the pledgee. *Nat. Ex. Bank of H.* v. *Wilder*, 34 Minn. 149, modifying *Fishback* v. *Van Dusen & Co.*, 33 Minn. 111.

Same—Same—Warehouse act of 1876:—Under the grain warehouse law of 1876 no distinction can be made between the person who makes an actual delivery of his grain at a public warehouse (actually upon deposit in the warehouse), and the one who leaves it in store with the proprietor as his bailee, taking a warehouse receipt therefor, following the rule laid down in *Nat. Ex. Bank of H.* v. *Wilder*, 34 Minn. 149. *Eggers et al.* v. *Nat. Bank of Commerce*, 40 Minn. 182.

Same—Cold storage—Exemption from liability—Negligence:—A warehouse receipt issued by a warehouseman to his bailor, exempting the former from liability for loss from certain causes, construed and *held* that the loss did not result from any of the excepted causes. *Hunter* v. *Baltimore Packing and Cold Storage Co.*, 75 Minn. 408.

Same—Effect of delivery:—Delivery of the warehouse receipt is equivalent to an actual transfer and delivery of the property itself. *Ammon* v. *Gamble—Robinson Commission Co.*, 127 N. W. 448, 449, 450.

Same—Negotiability—Transfer by sale without indorsement.—The title to property represented by a warehouse receipt may be passed by the sale, transfer and delivery of the receipt for a valuable consideration, although not in the form of an indorsement. *State* v. *Loomis*, 27 Minn. 521; *Pease* v. *Rush*, 2 Minn. 89.

Same—Bona fide holder protected:—A public warehouseman issued numerous receipts for wheat stored in his warehouse,

some of which were in the hands of the plaintiff, he having acquired them in good faith. The warehouseman then shipped the wheat to defendants, commission merchants, who sold the same and applied the proceeds to a debt due them from the warehouseman. *Held* this was a conversion on the part of defendants and that they were liable to plaintiff for value of the wheat. *Dolliff* v. *Robbins*, 83 Minn. 498.

Same—Purchaser of, must exercise ordinary prudence:—The purchaser of what purports to be, or is said to be, negotiable paper, must exercise ordinary prudence in respect to knowledge derived from an inspection of the paper. *Stein* v. *Rheinstrom et al.*, 47 Minn. 476.

Same—Implied contract of insurance passes with assignment: —Where a warehouse receipt contains an implied contract of insurance of the wheat stored, *held* that an assignment of such contract of insurance passed by a transfer of the storage receipt. *Thompson* v. *Thompson*, 78 Minn. 379.

Same—Law governing:—An insolvent grain elevator company having its place of business in Minnesota operated grain elevators in different states and had issued warehouse receipts on its own grain; these receipts specifying the amount of grain covered in each different warehouse. The receipts were pledged in different other states as security for loans. In a suit between the general creditors and the holders of the receipts it was held as to priority of payment, that as contracts of pledge, the receipts are to be construed according to the laws of the state where the grain was actually located when they were issued. *Swedish American Bank* v. *First National Bank*, 89 Minn. 98.

Same—As collateral—Payments from bill of sale or from receipts—Burden of proof on defendant—Judgment sustained by findings:—According to the findings of the court, prior to the execution of the bill of sale, the insolvent had executed, as security for his indebtedness to the defendant, warehouse receipts for chattel property, some of which were afterwards also included in the bill of sale referred to. The defendant permitted the insolvent to retain possession of all the property covered by either the receipts or the bill of sale, to sell and dispose of it and to pay part of the proceeds to apply to the indebtedness for which the property was security, and to use part in his own business. The payments sought to be recovered in this action

were made out of the proceeds of property covered by either or both the warehouse receipts and the bill of sale, but the court did not find, except as to $700, what amount of such payments was made out of proceeds of property covered by the warehouse receipts. *Held* that, under the circumstances, the burden was on the defendant to show what part of the payments was made out of the proceeds of property covered by warehouse receipts, and hence that the findings, as made, justified an order for judgment against the defendant for the full amount of the payments except the $700. *Clarke* v. *Nat. Citizens Bank of Mankato*, 74 Minn. 58.

Same—"Exchange tickets" and "inspector's tickets" for same property both outstanding—Liability:—The defendant, a railroad company, issued to the plaintiff, "inspector's ticket" for wheat stored with it, and, upon the presentation of the ticket to the agent of the railroad, it issued, in lieu thereof, in accordance with its custom, an "exchange ticket." It appeared that in some manner the original "inspector's ticket" found its way into the hands of other parties, who presented the same to defendant and obtained possession of the wheat. Upon demand, by the plaintiff, for the wheat, the defendant refused to deliver, alleging that it had already made delivery thereof. The court *held* that the delivery by the defendant to one holding "inspector's ticket" was an affair between the defendant and its agent or such other person, with which the plaintiff had no concern, and that the plaintiff was, therefore, entitled to judgment against the defendant for the value of the wheat. *Lewis et al.* v. *St. Paul & S. C. R. R. Co.*, 20 Minn. 260.

Same—Informal receipts—Warehouseman not estopped by:—A warehouseman issued a receipt in the following form:

No. 711

Account A. P. Foster.

41.25 bushels.....No. 2 wheat

20 sacks.

Dyer. J. G. Swart.

Minneiska, Sept. 29, 1866.

The owner disposed of this receipt and after several transfers it became the property of the plaintiff. The warehouseman stored the wheat, represented by this receipt, in a separate bin and, when the plaintiff demanded the same of him the identical wheat was tendered for delivery. The plaintiff declined to re-

ceive the same on the ground that it was inferior to No. 2 wheat, as stated on the receipt. In an action against the warehouseman, it was *held* that this receipt contained no representation that the defendant had agreed to deliver to Foster, or his assigns, No. 2 wheat; that it did not constitute the contract between the warehouseman and Foster and, to ascertain what this agreement was, it was necessary for the plaintiff to go outside of the receipt and to inquire for the other facts. Further, that the defendant was not estopped by the terms of this receipt. *Robson* v. *Swart*, 14 Minn. 371; *Herrick et al.* v. *Barnes*, 78 Minn. 475.

Same—Contract for sale and storage construed:—A certain contract construed and *held* to be an agreement by the owner of grain giving the warehouseman authority to sell it as the agent of the owner, and not merely a contract for storage, except such temporary storage as is incident to receiving, shipping and selling. *Murray* v. *Pillsbury*, 59 Minn. 85.

Same—Indictment for larceny of receipt—Cannot plead want of authority:—The defendant was proceeded against under an indictment charging him with the larceny of certain warehouse receipts, which were issued by a railroad company acting in the capacity of a warehouseman. The defendant, among other defenses, alleged that the receipts issued by the railroad company were not warehouse receipts, within the meaning of the statutes, and, under its corporate powers, it had no authority to issue such receipts. In this regard, the court *held* that the railroad had assumed the legal right to exercise the requisite authority, and, having reaped the benefit of the transaction, it would be estopped from setting up a want of authority in any action brought on the receipts, by any lawful holder thereof. Further, that, if the railroad company could interpose no such defense against its liability, upon the receipts, certainly the party who had feloniously obtained possession thereof could not be heard to assert it in answer to an indictment for the theft. *State* v. *Loomis*, 27 Minn. 521.

Same—Contract—Parol evidence:—Where a writing embraces both a receipt and a contract, the contract cannot be varied by parol, any more than if it were a separate instrument. *Tarbell* v. *Farmer's Mutual Elevator Co.*, 44 Minn. 471.

Same—Same—Same—Firm name:—Defendant, Thompson, was doing business in the name of Smith & Thompson, and the

storage receipt was signed in that name. *Held* the terms of the receipt could not for that reason be varied by parol, except so far as to explain the fact that defendant was doing business under such firm name. *Thompson* v. *Thompson,* 78 Minn. 379.

Same—Conversion of wheat—Evidence:—Rule applied and evidence considered in an action, by the holder of storage receipts for wheat issued by a warehouseman, against a purchaser of the wheat from the warehouseman for its conversion, and *held* (1) that it was error for the trial court to dismiss the action without making findings of fact; (2) that the evidence would have sustained a finding to the effect that the title to the wheat in question was in plaintiffs, and that it did not require, as a matter of law, a finding that they consented to the sale of the wheat to the defendant and received the purchase price therefor; (3) that if the storage receipts were intended by the parties thereto to cover the wheat actually in store, a misdescription of the grade thereof in the receipts would not, as between the parties, affect the title of the holder of the receipts to the wheat. *Herrick* v. *Barnes,* 78 Minn. 475.

R.

Bills of lading in name of bank discounting draft—Conversion:—Y., a warehouseman, having in his warehouse wheat deposited by others for storage, shipped it without their consent to Chicago; took bills of lading in which the bank of K. was named as consignee; drew his drafts on the parties in Chicago for whom the wheat was destined; procured the bank to discount them, delivering to it his bills of lading as security for them. The bank indorsed the bills in blank, and forwarded them, with the drafts, to its correspondent in Chicago, and the latter on payment of the drafts delivered the bills of lading to the drawee. *Held* that this did not render the bank liable, as for a conversion, to the owners of the wheat. *Lenthold et al.* v. *Fairchild et al.,* 35 Minn. 99.

T.

Indictment of warehouseman—Mingling grain—Failure to show intent to defraud:—A warehouseman was indicted for larceny, as bailee in fraudulently appropriating a quantity of flax. The warehouse receipts which he had issued gave him the right to commingle the grain or put it in other elevators, but not the

right to sell. It was held the transaction was under the statutes of the state and the warehouse receipt, a bailment and not a sale but that as there was an absence of facts to establish the wrongful intent, as required by the statute, a new trial would be granted. *State* v. *Cowdery*, 79 Minn. 94.

U.

Building grain elevator and carrying on grain business, by the state, are not the regulation of that business—Unconstitutional law:—Laws, 1893, ch. 30, entitled "An Act to provide for the purchase of a site and for the erection of a state elevator or warehouse at Duluth for public storage of grain," etc., is not an exercise of the police power of the state to regulate the business of receiving, weighing and inspecting grain in elevators. It has no relation to the regulation of the business, but provides for the state itself engaging in carrying it on. *Ruppe* v. *Becker*, 56 Minn. 100.

Same—In violation of art. 9, sec. 5, of the Constitution:—The act in question is in violation of the Constitution, art. 9, sec. 5, providing that "the state shall never contract any debts for works of internal improvement or be a party in carrying on such works." *Id.*

Regulation of carriers—Unconstitutional law:—The provision in Laws, 1895, ch. 149, sec. 11, requiring railroads and transportation companies to turn over to a storage company or public warehouse all property which the consignee fails to call for or receive within twenty days after notice of its arrival, is unconstitutional and void. *State of Minnesota* v. *Chicago, M. & St. P. Ry. Co.*, 68 Minn. 381.

Warehouse for owner's grain—Must have license—Laws, 1895, ch. 148, applicable and held constitutional:—The defendant operated a grain warehouse, in a village in this state, in which no grain was stored but the defendant's own, which he purchased of farmers at the warehouse where the grain was delivered and where it was weighed and graded by defendant on his own scales and with his own appliances. *Held* that the business so carried on was of such a public character, and sufficiently affected with public interest, that the legislature could require persons operating such warehouse to take out a license therefor as provided in Laws, 1895, ch. 148, and that this requirement was not repugnant

to the Constitution of the United States. *State ex rel. Railroad and Warehouse Commission, etc., v. W. W. Cargill Co.*, 77 Minn. 223, aff'd 180 U. S. 452.

Contracts exempting liability from loss—Public policy:—Plaintiff, under a contract with a railroad company, had erected a grain elevator on its right of way. The contract contained a provision saving the railroad company harmless for loss occasioned by fire communicated by its engines. *Held:* in action by warehousemen for loss, that such contract was not void as against public policy. *James Quirk Milling Co. v. Minneapolis & St. L. R. R. Co.*, 98 Minn. 22.

Taxation—Warehouseman not liable for tax on stored grain, when:—A grain warehouseman is not compelled to pay taxes on grain stored with him for which warehouse receipts have been issued to the owners thereof. *State v. Northwestern Elevator Co.*, 101 Minn. 192.

CHAPER XXIV

MISSISSIPPI

LAWS PERTAINING TO WAREHOUSEMEN

Sale of goods for—When the consignee or owner of any goods or articles transported on any railroad cannot be found or refuses to receive the same or pay the charges, or neglects to do so for a period of sixty days after notice addressed to the consignee and deposited in the post-office, application may be made by the railroad company or its agent to a justice of the peace for an order of sale; and if it be made to appear that the goods have been transported by the company, and that the consignee or owner cannot be found, or refuses or neglects to pay the costs and charges of transportation, or to receive the goods, the justice shall issue an order directed to the sheriff, or any constable or marshal, directing the sale of the goods at public vendue, at such time as the justice may direct, and the payment out of the proceeds of sale of the charges on such goods, and all costs which have accrued in procuring the order and making the sale; and should there be a balance left, it shall be paid into the county treasury, and the owner of the goods may receive the same out of the treasury, on the order of the board of supervisors, if applied for within two years, but not afterwards. Perishable goods may be sold, according to the exigency, if not immediately called for and taken. Code, Miss. 1906, sec. 2293.

The same extended to watercraft and warehousemen:—The owners of steamboats and other watercraft, and warehousemen, have the right to enforce charges for freight and storage in accordance with the provisions of the last preceding section, on goods which have been transported or stored by them where the consignee or owner cannot be found, or refuses or neglects to pay such charges. *Id.* sec. 2294.

Warehouse receipt as evidence:—Every warehouse receipt or other instrument in the nature or stead thereof acknowledging

the receipt of property for storage or safekeeping shall be conclusive evidence in the hands of a bona fide holder for value, whether by assignment, pledge, or otherwise, as against the person or corporation issuing the same, that the property has been so received and shall entitle such bona fide holder for value, of such receipt, to a delivery of the property so stored or deposited, or to the value thereof. *Id.* sec. 2295.

DECISIONS AFFECTING WAREHOUSEMEN

B.

Ordinary care and diligence:—It is only required of a warehouseman that he should exercise reasonable and ordinary diligence in the keeping and preservation of articles intrusted to him, such as men exercise in their own private affairs. *Cowles* v. *Pointer,* 26 Miss. 253; *Archer et al.* v. *Sinclair et al.,* 49 Miss. 343; *Ill. Cent. R. R. Co.* v. *Tronstine & Co.,* 64 Miss. 834; *Merchant's Wharfboat Assn.* v. *Wood & Co.,* 64 Miss. 661; *Yazoo & M. V. R. Co.* v. *Blum,* 59 So. 92.

Same—Construction of warehouse—Requirements:—A warehouseman is not required by law to construct his buildings secure from all possible contingencies, but they are sufficient if reasonably and ordinarily safe against ordinary and common occurrences. *Cowles* v. *Pointer,* 26 Miss. 253.

H.

Lien—Lost by surrender of goods—Warehouseman has not a general lien for balance due:—The lien of a warehouseman is a common-law lien, which is a creature of policy, and is a specific or particular lien which attaches to each separate bailment and is lost when the particular articles of each bailment are delivered to the bailor, or his assignee. Therefore, where the plaintiff sued the defendant, in replevin, for the recovery of fifty-nine bales of cotton, alleging that he had made tender of all charges due thereon and the warehouseman refused to deliver unless plaintiff also paid charges upon cotton previously stored and delivered, judgment was given for the plaintiff. *Shingleur-Johnson & Co.* v. *Canton Cotton Warehouse Co.,* 78 Miss. 875.

Same—Landlord not entitled to warehouseman's lien:—A lessee abandoned his lease and left certain goods on the premises,

The landlord notified the holder of the chattel trust on the goods that he would look to the holder of the trust for the payment of the accrued rent. In a replevin suit for possession of the goods the landlord claimed a warehouseman's lien on them. *Held:* that no warehouseman's lien arose under ch. 52, pp. 44 and 45, Act 1894, and there was no implied lien as against the mortgagee who was not the owner of the property. *Brunswick-Balke-Collender Co.* v. *Murphy*, 42 So. 288.

Same—Section 2682, Code, 1892, construed:—The contention that a warehouseman, under section 2682, Code 1892, has a lien on cotton raised in this state, for storage, and other charges connected therewith, is not supported by any reasonable construction of that statute. *Id.*

K.

Property taken under legal process—Duty and liability of bailee:—If cotton, stored in a warehouse, be seized, under legal process, against any other person than the warehouseman or the owner, and the warehouseman give notice of such seizure and of all facts known to him, or which might have been known to him by the exercise of ordinary care and inquiry, to the owner, the warehouseman is relieved from liability; and in the absence of the claim of other parties, he would be justified in acting as if the person, to whom the receipts had been given, had continued owner. The seizure of property under legal process against the owner is a legal discharge of the bailee. *Mortimore* v. *Ragsdale*, 62 Miss. 86.

L.

Replevin—When bailor cannot maintain:—A bailor cannot maintain an action of replevin for the use of the pledgee, of his warehouse receipts, against a warehouseman with whom the property is stored. The pledgee alone can maintain replevin or trover against the warehouseman. *Selleck* v. *Macon Compress Co.*, 72 Miss. 1019; *Mortimore* v. *Ragsdale*, 62 Miss. 86.

N.

What constitutes prima facie case:—Where the plaintiff in an action against a warehouseman had introduced the warehouse receipts and proved a demand made upon the defendant, or his agent, for the property therein described, at any time before this

institution of the suit, he had established a *prima facie* right to recover. *Mortimore* v. *Ragsdale*, 62 Miss. 86.

Negligence—What is prima facie:—When a bailor shows that goods are delivered to his bailee in good condition and are lost or destroyed or returned in a damaged condition, this fact creates a prima facie presumption of negligence; and it thereupon devolves upon the bailee to absolve himself from negligence. *Yazoo & M. V. R. R. Co.*, v. *Hughes*, 47 So. 662, 663.

Same—When prima facie presumption of, does not arise:—Plaintiff agreed with agent of defendant to store certain baggage in defendant's wareroom for an indefinite time, paying storage thereon. The goods were destroyed by fire but no evidence was introduced on either side as to the circumstances and origin of the fire. *Held:* That in the absence of proof as to the circumstances of the fire, the defendant was improperly held to be prima facie negligent, since the destruction of property by fire is entirely consistent with ordinary care. *Yazoo & M. V. R. R. Co.* v. *Hughes*, 47 So. 662.

Same—Burden of proof—Rule stated:—In an action by a bailor against a bailee for the destruction of or injuries to the chattel while held under the bailment through the negligence of the latter, the burden of proof shifts from one side to the other, and rests with the plaintiff or the defendant, upon the development of the evidence. It is on the plaintiff to show the bailment, that the defendant took the property under it, and returned it in a damaged condition, or did not return it at all. It is also, it seems, with him to show the condition of the chattel when it was delivered to the defendant. If the property was in good condition for the uses of the bailment, and it is not returned, or returned in an injured state, or if, though there be an infirmity or defect in the chattel, but the injury sustained by it is not of a character attributable to such defect (as, for instance, where a leaky boat is let, and is injured by an explosion of gunpowder), the burden is on the bailee, since in either of the cases put, the injury would not have happened in the ordinary course of things had he been prudent and diligent; not, indeed, to acquit himself of all negligence, but to show a cause producing the injury which prima facie did not arise or result from or operate on account of a want of ordinary care on his part. This being done, the burden shifts back to the plaintiff to affirmatively show some

negligence on the part of the defendant. *Yazoo & M. V. R. R. Co.* v. *Hughes*, 47 So. 662, 664.

O.

Measure of damages—Conversion:—Certain cotton was lost by a warehouseman and there were several conferences between the plaintiff and defendant in relation to the loss. The plaintiff agreed to a delay until defendant could trace the cotton. After three years suit was brought. *Held:* that the value of the cotton at the time of the conversion is ordinarily the measure of damages and plaintiff was entitled to recover the value of the cotton the date its loss by the compress company became known, together with interest. *Hattiesburg Compress Co.* v. *Johnson*, 81 Miss. 731.

P.

Same—Negligence of carrier employed by owner cannot be imputed to latter—Instruction to jury:—The owner of cotton shipped the same, by a carrier who had an arrangement with the defendant warehouseman, under which all cotton received by it should be stored with the defendant, if necessary, to await the arrival of a steamboat. The evidence showed that the owner knew nothing of this arrangement, and that the warehouse containing the cotton was destroyed without negligence on the part of the warehouseman. In an action by the owner against the warehouseman, the contention was made by the defendant that if the place where the cotton was stored was dangerous, it was known to the railroad company, and, as it was the agent of the owner, such knowledge was imputable to the owner. It was *held* that this contention could not be sustained. It was further *held* that an instruction to the jury that the conditions and surroundings of the place in which the cotton was stored constituted a warning to the defendant of the danger of fire, and that although the fire did not originate from either of the enumerated conditions that the defendant was nevertheless responsible therefor, was erroneous. *Merchants' Wharfboat Assn.* v. *Wood & Co.*, 64 Miss. 661.

Q.

Warehouse receipts—Negotiability—Transfer without indorsement:—A warehouse receipt provided that it was transferable only by indorsement and delivery thereof. In a case where the property, represented by such a receipt, was sold, and there was

no indorsement of the receipt made, it was *held* that, as between the parties, this was a valid transfer of the property. *Shingleur-Johnson & Co.* v. *Canton Cotton Warehouse Co.*, 78 Miss. 875.

Same—Delivery without the return of receipts to true owner—Burden of proof:—Property stored in a warehouse, for which A held the receipt, is sold by him to B, but the receipts therefor were not transferred to B. In such a case, it was *held* that a delivery by the warehouseman to B, of the property represented, was legal, notwithstanding that the receipts were not taken up by the warehouseman and were not indorsed to B, for such delivery was one to the true owner. But the burden of establishing the right of B to receive the property was upon the warehouseman. *Mortimore* v. *Ragsdale*, 62 Miss. 86.

Same—Issuance by mistake no defense:—Even though a warehouse receipt was issued by mistake, a warehouseman cannot be permitted to assert, as against a subsequent *bona fide* holder of such receipt any defense, unless predicated of fraud, or one of those expressly provided for in the receipt. *Star Compress & Warehouse Co.* v. *Meridian Cotton Co.*, 87 Miss. 228, 231.

Same—Action by assignee of unindorsed receipt—Objection must be made at trial:—The plaintiff purchased certain property and obtained warehouse receipts representing the same. The receipts were not indorsed to him. In an action of replevin brought by him against the warehouseman for the recovery of the property, it was *held*, by the appellate court, that, as no objection had been made in the trial court to the receipts because not indorsed, objection now made, for the first time, comes too late. *Shingleur-Johnson & Co.* v. *Canton Cotton Warehouse Co.*, 78 Miss. 875.

Same—Exemption from loss by fire and water:—Defendant received for storage certain cotton and issued a receipt containing a provision "Not responsible for loss or damage by fire or water." A large quantity of the cotton was placed on the ground in an open field. Suit was brought for damage to the cotton. *Held:* that the clause in the receipt exempting the company from fire and water damage had no reference to damage resulting from exposure to the ordinary actions of the elements. The exemption related to damages resulting from some disaster. The bailee

had no right to expose the cotton to the weather and thus produce the damage which ordinary care would have avoided. *Grenada Cotton Compress Co.* v. *Atkinson*, 47 So. 644.

R.

Bill of lading—Exceptions therein:—Common carriers may obviate the rigor of the law holding them liable as insurers of goods intrusted to them by inserting in the bill of lading proper exceptions. *Gilmore* v. *Carman*, 1 S. & M. 279.

Same—Meaning of "inevitable accident":—A provision in a bill of lading providing that a carrier was not responsible for loss resulting from "inevitable accident" *held* that this phrase was synonymous with "act of God." *Neal* v. *Saunderson*, 2 S. & M. 572.

Same—Not conclusive as to ownership:—The names of the consignor and the consignee, stated in a bill of lading, are not conclusive as to the ownership of the property represented thereby. Testimony will be received to establish the facts as to the real ownership. *Fast* v. *Canton, A. & N. R. R. Co.*, 77 Miss. 498.

CHAPTER XXV

MISSOURI

LAWS PERTAINING TO WAREHOUSEMEN

The Uniform Warehouse Receipts Act is in force in Missouri. It was approved April 12, 1911. Laws Missouri, 1911, p. 431. Also this volume, p. 1.

Warehouses and storehouses declared public warehouses:—That all warehouses or storehouses situated in cities of over fifty thousand inhabitants, and wherein other property than grain is stored for a compensation, are declared to be public warehouses. Rev. Stats. Mo., 1909, sec. 11946.

License for public warehouse:—The proprietor, lessee or manager of any public warehouse provided for by this chapter shall be required, before transacting any business in such warehouse, to procure from the circuit court of the county in which such warehouse is situated—or if to procure license for a public warehouse in the city of St. Louis, application shall be made to the circuit court of said city—a license permitting such proprietor, lessee or manager to transact business as a public warehouseman under the laws of this state, which license shall be issued by the clerk of said court upon written application, which shall set forth the location and name of such warehouse, and the individual name of each person interested as owner or principal in the management of the same, or if the warehouse be owned by or managed by a corporation, the names of the president, secretary and treasurer of such corporation shall be stated; and the said license shall give authority to carry on and conduct the business of a public warehouse, other than a warehouse for the storage of grain, in accordance with the laws of this state and shall be revocable by the said court upon a summary proceeding before the court, upon the complaint of any person, in writing, setting forth the particular violation of the law to be sustained by satisfactory proof, to be taken in such manner as may be directed by the court. *Id.* sec. 11947.

Public warehouseman to give bond:—The person or persons receiving a license under the provisions of this chapter shall file with the clerk of the court granting the same, a bond to the people of the state of Missouri, with good and sufficient security, to be approved by said court, in the penal sum of twenty-five thousand dollars, conditioned for the faithful performance of his or their duties as public warehouseman or warehousemen, and as security for the payment of all penalties and damages found and adjudged by due course of law, for violation of any clause of this chapter, and his or their full and unreserved compliance with the laws of this state in relation thereto. *Id.* sec. 11947.

Above section construed—Bond—Breach of condition—Damages:—Action on a bond conditioned (among other things) "for the faithful performance of his duty as a public warehouseman." *Held:* The implied contract of a warehouseman on receiving goods for storage is that he will use ordinary care in keeping them, and it is his main duty to make delivery when the bailment terminates. The faithful performance of this common law and contractual duty the defendant as a warehouseman by his bond covenanted to perform. The obligation of the bond sued on is one of indemnity and in such cases damage must be sustained before a recovery can be had. The recovery will be limited to nominal damages until substantial damages have been proven, but a recovery of substantial damages may be had where they are the natural and proximate consequence of the breach. Judgment for plaintiff affirmed. *Fissette* v. *Sullivan*, 99 Mo. App. 616.

Same—Surety not discharged by bankruptcy of principal:—The principal on a bond, a warehouse company, was declared a bankrupt and entered into a composition with its creditors. In a suit by the holder of a warehouse receipt against the principal and its surety on a warehouse bond, it was *held* that the fact that the principal was discharged from its liability on the debt did not operate in any manner to discharge the surety on his bond. *State ex rel First National Bank* v. *Federal Union Surety Co.*, 156 Mo. App. 603, 609.

Transacting business without a license—Penalty:—Any person or persons who shall transact within a city of over fifty thousand inhabitants, the business of storing for compensation

other property than grain, without first procuring license and giving a bond as herein provided, or who shall continue to transact such business after such license has been revoked, or such bond may have become void or found insufficient security for the penal sum in which it is executed, by the court approving the same (save only that he may be permitted to deliver property previously stored in such warehouse), shall be guilty of a misdemeanor, and upon conviction be fined in a sum not less than $100 nor more than $500 for each and every day such business is carried on; and the court that issued may refuse to renew any license, or grant a new one, to any person whose license has been revoked, within one year from the time same was revoked. Rev. Stats. Mo. 1909, sec. 11949.

Property to be sold for storage charges:—If the owner of any goods, merchandise, or other property shall store the same in any warehouse created by this chapter, and shall not pay the storage charges upon the same within a period of sixty days after said charges have become due, it shall be lawful for the warehouseman to sell such goods, merchandise or other property, or so much thereof as will pay all storage and other charges, at auction to the highest bidder, first having given either twenty days' notice by advertisement in a daily paper, or four weeks' notice by advertisement in a weekly paper, of the time and place of sale, and having further given notice to the owner by mailing him, at least twenty days before the day of sale, if his address is known, a notice of the time and place of sale; and if there be any surplus left after paying the storage charges, cost of advertising and all other just and reasonable charges, the same shall be paid over to the rightful owner of said property at any time thereafter, upon demand being made therefor within sixty days; and if no such demand for such surplus is made within sixty days after the time of such sale, then said surplus shall be paid into the county treasury, subject to the order of the owner. *Id.* sec. 11950.

Warehouseman, etc., not to issue receipt until goods actually in store:—No warehouseman, wharfinger, or other person, shall issue any receipt or other voucher for any goods, wares, merchandise, grain, flour, or other produce or commodity, to any person or persons purporting to be the holder, owner or owners thereof, unless such goods, wares, merchandise, grain, or

other produce or commodity, shall have been actually received into store or upon the premises of such warehouseman, wharfinger, or other person, and shall be in the store or on the premises aforesaid and under his control at the time of issuing such receipt. *Id.* sec. 11951.

Not to issue any receipt for money loaned, etc., until goods actually in store:—No warehouseman, wharfinger, or other person shall issue any receipt or other voucher upon any goods, wares, merchandise, grain, flour, or other produce or commodity, to any person or persons, for any money loaned, or other indebtedness, unless such goods, wares, merchandise, grain, flour, or other produce or commodity, shall be, at the time of issuing such receipt, in the custody of such warehouseman, wharfinger, or other person, and shall be in store or upon the premises and under his control at the time of issuing such receipt or other voucher, as aforesaid. *Id.* sec. 11952.

Not to issue second receipt—When:—No warehouseman, wharfinger, or other person, shall issue any second or duplicate receipt for any goods, wares, merchandise, grain, flour, or other produce or commodity, while any former receipt for any such goods, wares, merchandise, grain, flour or other produce or commodity, as aforesaid, or any part thereof, shall be outstanding and uncancelled, without writing across the face of the same "duplicate." *Id.* sec. 11953.

Not to sell, etc., goods without written assent of person holding receipt:—No warehouseman, wharfinger, or other person, shall sell or incumber, ship, transfer, or in any manner remove, or permit to be shipped, transferred or removed beyond his control, any goods, wares, merchandise, grain, flour, or other produce or commodity, for which a receipt shall have been given by him, as aforesaid, whether received for storing, shipping, grinding, manufacturing, or other purpose, without the written assent of the person or persons holding such receipt. *Id.* sec. 11954.

Not to give shipping receipt until goods are actually on boat, etc.:—No master, owner or agent of any boat or vessel of any description, forwarder, or officer or agent of any railroad, transfer or transportation company, or other person, shall sign or give any bill of lading, receipt or other voucher or document for any merchandise or property, by which it shall appear

that such merchandise or property has been shipped on board of any boat, vessel, railroad car or other vehicle, unless the same shall have been actually shipped and put on board, and shall be at the time actually on board or delivered to such boat, vessel, car, or other vehicle, to be carried and conveyed as expressed in such bill of lading, receipt or other voucher or document. *Id.* sec. 11955.

Receipts, bills of lading, etc., declared negotiable:—All receipts issued or given by any warehouseman, or other person or firm, and all bills of lading, transportation receipts and contracts of affreightment, issued or given by any person, boat, railroad or transportation or transfer company, for goods, wares, merchandise, grain, flour or other produce, shall be and are hereby made negotiable by written indorsement thereon, and delivery in the same manner as bills of exchange and promissory notes; and no printed or written conditions, clauses or provisions inserted in or attached to any such receipts, bills of lading or contracts shall in any way limit the negotiability or affect any negotiation thereof, nor in any manner impair the right and duties of the parties thereto, or persons interested therein; and every such condition, clause or provision purporting to limit or affect the rights, duties or liabilities created or declared in this chapter, shall be void and of no force or effect. Id. sec. 11956.

How transferred—Lien created—Exception:—Warehouse receipts given by any warehouseman, wharfinger or other person or firm, for any goods, wares, merchandise, grain, flour or other produce or commodity, stored or deposited, and all bills of lading and transportation receipts of every kind, given by any carrier, boat, vessel, railroad, transportation or transfer company, may be transferred by indorsement in writing thereon, and the delivery thereof so indorsed, and any and all persons to whom the same may be so transferred shall be deemed and *held* to be the owner of such goods, wares, merchandise, grain, flour or other produce or commodity, so far as to give validity to any pledge, lien or transfer given, made or created thereby, as on the faith thereof, and no property so stored or deposited, as specified in such bills of lading or receipts, shall be delivered, except on surrender and cancellation of such receipts and bills of lading: *Provided, however,* That all such receipts and bills of lading, which shall have the words *not negotiable* plainly written or

stamped on the face thereof, shall be exempt from the provisions of this act. *Id.* sec. 11957.

Penalty for violation of certain sections of this chapter:—Any warehouseman, wharfinger, forwarder or other person who shall violate any of the provisions of sections 11951 to 11960, inclusive, of this chapter shall be deemed guilty of a criminal offense, and, upon indictment and conviction, shall be fined in any sum not exceeding five thousand dollars, or imprisoned in the penitentiary of this state not exceeding five years, or both; and all and every person or persons aggrieved by the violation of any of the provisions of said sections may have and maintain an action at law against the person or persons, corporation or corporations violating any of the provisions of said sections, to recover all damages, immediate or consequential, which he or they may have sustained by reason of any such violation, as aforesaid, before any court of competent jurisdiction whether such person or persons shall have been convicted of fraud as aforesaid, under said sections or not. *Id.* sec. 11958.

Certain sections applicable to bills of lading:—All the provisions of sections 11951 to 11960, inclusive, of this chapter shall apply and be applicable to bills of lading, and to all persons or corporations, their agents or servants, that shall or may issue bills of lading of any kind or description, the same as if the words *forwarder and bills of lading* were mentioned in each of said sections of this chapter. *Id.* sec. 11959.

Exception as to application:—So much of the nine preceding sections of this chapter as forbids the delivery of property except on surrender and cancellation of the original receipt or bill of lading, or the indorsement of such delivery thereon in case of partial delivery, shall not apply to property replevined or removed by operation of law. *Id.* sec. 11960.

Repealing and re-enacting article 2 of chapter 60 and defining the word commissioner:—That article 2 of chapter 60 of the Revised Statutes of Missouri, 1909, relating to inspection of grain and hay, is hereby repealed and the following new sections enacted in lieu thereof, relating to inspection and weighing of grain, abolishing the office of railroad and warehouse commissioners, creating the office of warehouse commissioner and fixing his powers and duties. The word "commissioner," when

used in this act, means the warehouse commissioner hereby created.

An Act to repeal article 2 of chapter 60 of the Revised Statutes of Missouri, 1909, relating to inspection of grain and hay, and to enact in lieu thereof a new article, to be known as article 2, relating to inspection and weighing of grain, abolishing the office of railroad and warehouse commissioners, creating the office of warehouse commissioner and fixing his powers and duties, with an emergency clause. Approved March 20, 1913. Laws Mo., 1913, page 354, sec. 1.

Railroad and warehouse commissioners, office abolished—warehouse commissioner—office created—powers and duties: —The office of railroad and warehouse commissioners is hereby abolished, and the office of warehouse commissioner is hereby created and established, and said commissioner shall be vested with and possessed of the powers and duties in this act specified. *Id.* sec. 2.

Warehouse commissioner—appointment of—tenure of office—vacancy, how filled:—The governor shall, by and with the advice and consent of the senate, appoint the warehouse commissioner for a term of six years, such term to begin on the date of the taking effect of this act. Upon the expiration of said term, and thereafter, a commissioner shall be appointed for four years from the time of his appointment and qualification and shall serve until his successor is appointed and qualifies. Any vacancy occurring by removal, resignation or death, shall be filled by the governor for the unexpired term. *Id.* sec. 3.

Commissioner may be removed, how:—The Governor may remove the commissioner for inefficiency, neglect of duty, or misconduct in office, giving to him a copy of the charges against him and an opportunity of being publicly heard in person or by counsel, in his own defense, upon not less than ten days' notice. If such commissioner shall be removed, the governor shall file in the office of the secretary of state a complete statement of all charges made against such commissioner, and his findings thereon, together with a complete record of the proceedings. The legislature also shall have the power, by a two-thirds vote of all members elected to each house, after ten days' notice in writing of the charges and a public hearing, to remove the

commissioner from office for dereliction of duty, or corruption, or incompetency. *Id.* sec 4.

Commissioner, inspectors and assistants—Salaries of:—The annual salary of the commissioner shall be four thousand five hundred dollars. The commissioner shall fix the amount of compensation to be paid to the chief inspector, deputy chief inspector and assistant inspectors, clerks, stenographer and all other persons employed in the service of inspecting and weighing grain and prescribe the time and manner of payment: Provided, that the annual salary of the chief inspector shall not exceed $2,500; that the annual salary of the deputy chief inspector shall not exceed $2,000; that the annual salary of the supervising inspector, an assistant inspector, a registrar, a chief clerk or a clerk shall not exceed $1,800; that the annual salary of a weigher or a helper shall not exceed $1,500 and that the annual salary of a stenographer shall not exceed $1,200. *Id.* sec. 5.

Commissioner—oath of office—bond:—Before entering upon the duties of his office the commissioner shall make, subscribe to and file with the secretary of state, the following oath: "I do solemnly swear (or affirm), that I will support the Constitution of the United States and the Constitution of the state of Missouri, and that I will faithfully discharge the duties of warehouse commissioner according to the best of my ability and that I will correctly account for all moneys collected by me or coming into my hands as commissioner." The commissioner shall enter into a bond, with security, to be approved by the governor, in the sum of twenty thousand dollars, conditioned upon the faithful performance of his duty and a correct accounting of funds. *Id.* sec. 6.

Chief inspector—appointment—duties of:—It shall be the duty of the commissioner to appoint a suitable person, who shall not be a member of a board of trade, who shall not be interested either directly or indirectly, in any warehouse, elevator or in grain merchandising in this state, who shall be a grain expert, and who shall be known as the chief inspector of grain for the state of Missouri, whose term of service as such shall continue for four years and until his successor is appointed and qualified. It shall be the duty of the chief inspector to have a general supervision of the inspection of grain, as required by this article

or laws of this state, under the immediate direction of the commissioner. *Id.* sec. 7.

Public warehouses—public warehousemen:—All buildings, elevators or warehouses wherever state grain inspection may be established by the commissioner and having a capacity of not less than fifty thousand bushels, erected and operated, or which hereafter may be erected or operated, by any person or persons, association, co-partnership or corporation, for the purpose of storing the grain of different owners for a compensation, are hereby declared public warehouses and the person or persons, associations, co-partnerships or corporations owning such building or buildings, elevator or elevators, warehouse or warehouses, which are now or may hereafter be located or doing business within this state, as above described, whether said owners or operators reside within this state or not, are public warehousemen within the meaning of this section. *Id.* sec. 8.

License for public warehouse or public elevator—Issued by whom—how:—The proprietor, lessee or manager of any public warehouse or public elevator shall be required, before transacting any business in such warehouse or elevator, to procure from the circuit court of the county in which such warehouse or elevator is situated,—or if to procure license for a public warehouse or public elevator in the city of St. Louis, application shall be made to the circuit court of said city—a license permitting such proprietor, lessee or manager to transact business as a public warehouseman or public elevatorman under the laws of this state, which license shall be issued by the clerk of said court upon written application, which shall set forth the location and name of such warehouse or elevator and the individual name of each person interested as owner or principal in the management of the same; or if the warehouse or elevator be owned by or managed by a corporation, the name of the president, secretary and treasurer of such corporation shall be stated; and the said license shall give authority to carry on and conduct the business of a public warehouse or public elevator in accordance with the laws of this state, and shall be revocable by the said court upon a summary proceeding before the court upon the complaint of any person, in writing, setting forth the particular violation of the law, to be sustained by satisfactory proof to

be taken in such manner as may be directed by the court. *Id.* sec. 9.

Public warehousemen to give bond—schedule:—The person or persons receiving a license as herein provided shall file with the clerk of the court granting the same, a bond to the people of the state of Missouri, with good and sufficient security to be approved by said court, in the penal sums as per the following schedule of capacities by measurement: For a public warehouse or public elevator with a capacity of 50,000 bushels or less, two thousand five hundred dollars; for a public warehouse or public elevator with a capacity of more than 50,000 bushels and not exceeding 100,000 bushels, five thousand dollars; for a public warehouse or public elevator with a capacity of more than 100,000 bushels and not exceeding 200,000 bushels, ten thousand dollars; for a public warehouse or public elevator with a capacity of more than 200,000 bushels and not exceeding 300,000 bushels, fifteen thousand dollars; for a public warehouse or public elevator with a capacity of more than 300,000 bushels and not exceeding 400,000 bushels, twenty thousand dollars; for a public warehouse or public elevator with a capacity of more than 400,000 bushels and not exceeding 500,000 bushels, twenty-five thousand dollars; for a public warehouse or public elevator with a capacity of more than 500,000 bushels and not exceeding 750,000 bushels thirty-seven thousand five hundred dollars; for a public warehouse or public elevator with a capacity of more than 750,000 bushels and not exceeding 1,000,000 bushels, fifty thousand dollars; for a public warehouse or public elevator with a capacity exceeding 1,000,000 bushels one hundred thousand dollars—conditioned for the faithful performance of his or their duties as public warehouseman or warehousemen, elevatorman or elevatormen, as security for any penalties found by due course of law for violation of any clause of this article, and his or their full and unreserved compliance with the laws of this state in relation thereto. *Id.* sec. 10.

Transacting business without license—penalty:—Any person or persons who shall transact the business of public warehouseman or warehousemen, elevatorman or elevatormen, without first procuring license and giving bond as herein provided, or who shall continue to transact such business after such license has been revoked, or such bond may have become void or found

insufficient security for the penal sum in which it is executed by the court approving the same save only that he may be permitted to deliver property previously stored in such warehouse or elevator, shall be guilty of a misdemeanor and upon conviction be fined in a sum not less than one hundred dollars nor more than five hundred dollars for each and every day such business is carried on; and the court that issued may refuse to renew any license or grant a new one to any person or persons whose license has been revoked within one year from the time the same was revoked. *Id.* sec. 11.

Public warehousemen or elevatormen—duties of:—It shall be the duty of the person or persons doing a public warehouse or public elevator business under this article to receive for storage, handling or mixing, any grain that may be tendered to him or them in the usual manner with which warehouses or elevators are accustomed to receive the same in the usual and ordinary course of business, and to not discriminate between persons desiring to avail themselves of warehouse or elevator facilities, and that the schedule of charges for such warehouse or elevator service shall be uniform, regardless of quantities or lots so offered or received. *Id.* sec. 12.

Grain to be inspected:—Receipts of grain by public warehouses in all cases shall be inspected and graded by a duly authorized inspector, and shall be stored with grain of a similar grade, received as near the same time as may be; but if the owner or consignee so requests and the warehouseman consents thereto, his grain of the same grade may be kept in a bin by itself apart from the general stock of the warehouse; which bin shall be marked "special," with the name of the owner and with the quantity and grade of same, and the warehouse receipt issued for same shall state upon its face that the grain is stored in a special bin giving the number of same and the quantity and grade of the grain so stored. *Id.* sec. 13.

Grain—not to be delivered unless inspected:—No grain shall be delivered from or transferred through a public warehouse or public elevator constituted by this article unless it be inspected by a duly authorized state inspector. *Id.* sec. 14.

Grain—not to be mixed by warehousemen or elevatormen:—Public warehousemen and public elevatormen shall not mix any

grain of different grades together, nor select or mix different qualities of the same grade for the purpose of storing or delivering the same, nor shall they deliver or attempt to deliver grain of one grade for grain of another grade, nor in any way tamper with grain while in a public warehouse or public elevator in his or their possession or custody, nor permit the same to be done by others with the view or result of profit to anyone; and in no case shall grain of different grades, either from the general stock or from special bins, be mixed together while in store or control of such public warehouseman or public elevatorman, except on request of the owner thereof. *Id.* sec. 15.

Grain—may be run through machinery—when:—Whenever it may be necessary, in order to preserve the condition of any bin or lot of grain belonging to any person, stored in a public warehouse or public elevator to run said grain through machinery to air, clean or otherwise improve its condition, and it is so desired by the owner, this shall be done, but in such manner as will insure the contents of each bin or lot intact, and of the same grade as when stored; but this shall not be done except under the supervision of an authorized state inspector. *Id.* sec. 16.

Grain—not to be received unless sufficient room:—Nothing in this article shall be construed so as to compel the receipt of grain into any public warehouse or public elevator in which there is not sufficient room to accommodate or store it properly, or in cases where such public warehouse or public elevator is necessarily closed. *Id.* sec. 17.

Grain—not to be received and mixed until inspected and graded:—In all places where there are legally appointed state inspectors of grain, no proprietor or manager of a public warehouse or public elevator shall be permitted to receive any grain and mix the same with grain of other owners in the storage thereof, or stored in special bins, until the same shall have been inspected and graded by such state inspector. *Id.* sec. 18.

Warehouseman or elevatorman—not to enter into combination:—No warehouseman or elevatorman, agent or manager of a public warehouse or public elevator shall enter into any combination, agreement or understanding with any railroad, steamboat transfer or other carrying corporation, or with any person or persons by which the property of any person is to

be delivered to any public warehouse or public elevator for storage or other purpose, contrary to the direction of the owner, his agent or assignee. *Id.* sec. 19.

Receipts to be issued, when—to be numbered, how:—Upon all grain received into or handled by or stored in a public warehouse or public elevator, the same being accompanied with evidence that all charges which may be a lien upon such grain, including charges for inspection and weighing, have been paid, the warehousemen or elevatormen shall forward to the office of the chief inspector, for proper registration, warehouse or elevator receipts for grain received, and shall issue to the person entitled thereto a warehouse or elevator receipt therefor, subject to the order of the owner or consignee, which receipt shall bear date corresponding with the receipt of the grain into the the warehouse or elevator for transferring, handling or storing and shall state upon its face the quantity and inspected grade of the grain and that the grain mentioned in it has been received into such warehouse or elevator for the purpose of being transferred or handled or to be stored with grain of the same grade by inspection received at about the date of the receipt, and that it is deliverable upon the return of the receipt properly endorsed by the person to whose order it was issued, and upon the payment of charges accrued for storage, handling or transferring. All warehouse or elevator receipts for grain issued from the same warehouse or elevator shall be consecutively numbered, and no two receipts bearing the same number shall be issued from the same warehouse or elevator during any one year, except in case of a lost or destroyed receipt, in which case the new receipt shall bear date and number as the original, and shall be plainly marked upon its face "duplicate." If the grain for which receipts are issued was received for (from) railroad cars, the number and initials of each car shall be stated in the receipt, with the amount each car contained; if by boat, barge or other vessel, the name of such craft; if from wagons or other means it shall be so stated; if having been bulked from sacks, the manner of its receipt shall be stated upon the face of such receipt for grain so received. *Id.* sec. 20.

Receipts—issuance of—general provisions for:—No public warehouse or public elevator receipt shall be issued except upon actual delivery of grain into such warehouse or elevator from

which it purports to be issued, and which is to be represented by the receipt; nor shall any receipt be issued for greater quantity of grain than was contained in the lot stated to have been received, nor shall more than one receipt be issued for the same lot of grain except in cases where receipts for a part of a lot are desired, and then the aggregate receipts for a particular lot shall cover that lot and no more. In cases where a part of the grain represented by the receipt is delivered out of such warehouse or elevator, and the remainder is left, a new receipt may be issued for such remainder; but such new receipt shall bear the same date as the original, and shall state on its face that it is the balance of receipt of the original number, and the receipt upon which a part has been delivered shall be cancelled in the same manner as if the grain it called for had all been delivered. In case it be desirable to divide one receipt into two or more, or in case it be desirable to consolidate two or more receipts into one, and the warehouseman or elevatorman consents thereto, the original receipt shall be canceled the same as if the grain had been delivered from such warehouse or elevator; and the new receipts shall state on their face that they are parts of other receipts or a consolidation of other receipts, as the case may be; and the numbers of the original receipts shall also appear upon the new ones issued explaining the change, and all new receipts issued for old ones canceled, as herein provided, shall bear the same dates as those originally issued, as near as may be. *Id.* sec. 21.

Receipt—not to limit or modify responsibility:—No warehouseman or elevatorman under this article shall insert in any receipt issued for grain received any language in anywise limiting or modifying his responsibility or liability as imposed by the laws of this state. *Id.* sec. 22.

Receipt—cancellation of—upon delivery of grain:—Upon delivery of grain from such warehouse or elevator upon any receipt, such receipt shall be handed to the chief inspector for proper cancellation by the registrar, plainly marked across its face with the word "canceled," with the name of the person canceling the same, and shall thereafter be void and shall not again be put in circulation, nor shall grain be delivered twice on the same receipt. *Id.* sec. 23.

Receipts—transferable by indorsement:—Public warehouse or public elevator receipts for property received or handled by such warehouse or elevator created by this article as herein described shall be transferable for (by) the indorsement of the party to whose order such receipt may be issued, and such indorsement shall be deemed a valid transfer of the property represented by such receipt, and may be made either in blank or to the order of another. *Id.* sec. 24.

Receipts—fraudulent—penalty:—Any warehouseman or elevatorman of any public warehouse or public elevator created by this article, or employee of such warehouse or elevator, or owner or manager connected with same, or any other person who shall be guilty of issuing any warehouse or elevator receipt for any property not actually in such warehouse or elevator at the time of issuing such receipt, or who shall be guilty of issuing any warehouse or elevator receipt in any respect fraudulent in its character, either as to its date or the quantity, quality or inspected grade of such property, or who shall issue a duplicate receipt without marking the same "duplicate," or who shall forge the registrar's name to an original or duplicate warehouse or elevator receipt, or who shall remove any property from such warehouse or elevator except to preserve it from fire or other sudden danger, without the return and cancellation of any and all outstanding receipts that may have been issued to represent such property, shall, when convicted thereof, be guilty of a felony, and in addition to other penalties prescribed by this article, may be punished by imprisonment in the penitentiary for not less than two and not more than ten years. *Id.* sec. 25.

Receipt—presentation of—grain to be delivered:—Upon the return of any warehouse or elevator receipt issued by persons in charge of a warehouse or elevator created by this article, and the demand for the delivery of property represented by such receipt, duly indorsed, if not presented by the original holder, accompanied by the tender of all proper charges upon the property represented, such property shall be immediately deliverable to the holder of such receipt, and it shall not be subject to further charges for storage after demand for such delivery shall have been made, and deliveries shall be made by the warehouseman or elevatorman in the order in which such receipts are presented and demand for deliveries made. *Id.* sec. 26.

Rates—schedule of—to be published—by whom:—The manager of every public warehouse or public elevator created by this article, shall be required, within thirty days after the passage of this article, and during the first week of January of each year thereafter, to publish in one or more of the newspapers published in the vicinity in which such warehouse or elevator is situated, a schedule of rates for the transferring, handling or storing of grain in his warehouse or elevator during the ensuing year, which rates shall not be increased during the year without the consent of the commissioner and such published rates, or any published reduction of them, shall apply to all grain received into or handled by such warehouse or elevator from any person or source, and no discrimination shall be made, directly or indirectly, for or against any person in any charges made by such warehouseman or elevatorman for the transferring, handling or storing of grain. The maximum charge for the storing, transferring or handling of grain, including the cost of receiving and delivering, shall be for the first ten days days or part thereof, two cents per bushel, and for each ten days or part thereof after the first ten days, one-half of one cent per bushel. *Id.* sec. 27.

Grain—grade and amount of on hand to be posted—statements of grain received, etc., to be made daily—receipts issued and canceled of grains received and delivered:—The manager of every public warehouse or elevator created under this article shall, on or before Tuesday morning of each week, cause to be made out, and shall keep posted in the business office of his warehouse or elevator, in a conspicuous place, a statement of the amount of each kind and grade of grain in store in his warehouse or elevator, at the close of business on the previous Saturday, and shall also, on each Tuesday morning, render a similar statement, made under oath before some officer authorized by law to administer oaths, by some one connected with such warehouse or elevator having personal knowledge of the facts to the commissioner. He shall also be required to furnish daily to said commissioner a correct statement of the amount of each kind of grain and grade of same received in store, transferred or handled in such warehouse or elevator on the previous day; also the amount of each kind of each grade of grain delivered or shipped by such warehouse or elevator during the previous day, and what warehouse or elevator receipts have been can-

celed upon which the grain has been delivered on such days, giving the number of each receipt and the amount, kind and grade of grain received and shipped upon each; also how much through grain in transit to points outside of the state, if any, may have been received for trans-shipment, for which warehouse receipts have not been issued, was so shipped or delivered, and the kind and grade of it, when and how such unreceipted grain was received. He shall also make daily report to the commissioner of receipts and deliveries of such unreceipted grain, if any, received for the account of owners of such warehouse or elevator, either directly or indirectly, with the amount, kind and grade of same. He shall also report daily to the commissioner what receipts, if any, have been canceled and new ones issued in their stead, as herein provided for. He shall also make such further statements to the commissioner regarding receipts issued or canceled as may be necessary for the keeping of a full and correct record of all receipts issued and canceled and of grain received and delivered. *Id.* sec. 28.

Not responsible for loss or damage by fire—to give notice of grain damaged—may be sold at auction, when:—The owner of public warehouses or public elevators under this article shall not be held responsible for any loss or damage to property by fire while in their custody: Provided, reasonable care and vigilance be exercised to protect and preserve the same; nor shall they be held liable for damage to grain by heating, if it can be shown that proper care has been exercised in handling and storing the same, and that such damage was the result of cause beyond their control; but unless such public notice be given that some portion of the grain in such warehouse or elevator is out of condition or becoming so, grain of equal quality to that received shall be delivered on all receipts presented. In case, however, any warehouseman or elevatorman shall discover that any portion of the grain in his warehouse or elevator is out of condition, or becoming so, and it is not in his power to preserve the same, he shall immediately give public notice by advertisement in a daily newspaper, if one is published in the city or town in which such warehouse or elevator is situated, and by posting a notice in the most public place for such a purpose in such city or town of its actual condition, as near as it can be ascertained. Such notice shall state the kind and grade of the grain and give the number of the bins in which it is

stored, and shall also state in such notice the receipts outstanding upon which such grain will be delivered, giving the numbers and amounts and dates of each, which receipts shall be those of the oldest dates then in circulation or uncanceled, the grain represented by which has not previously been declared or receipted for as out of condition; the enumeration of receipts and identification of grain so discredited shall embrace, as near as may be, as great a quantity of grain as is contained in such bins, and such grain shall be delivered upon the return and cancellation of the receipts so declared to represent it, upon the request of the owner thereof. Nothing herein contained shall be held to relieve the said warehouseman or elevatorman from exercising proper care and vigilance in preserving such grain after such publication of its condition; but such grain shall be kept separate and apart from all direct contact with other grain, and shall not be mixed with other grain while in store in such warehouse or elevator. In case the grain is declared out of condition, as herein provided for, and the same is not removed from store by the owner thereof within two months of the date of the notice of its being out of condition, it shall be lawful for the warehouseman or elevatorman where the grain is stored to sell the same at public auction, for account of said owner, by giving ten days' public notice by advertisement in a daily newspaper if there be one published in the city or town where such warehouse or elevator is located. All costs incurred in the sale of said grain, storage charges, etc., to be paid from the money derived from the sale of said grain, the balance, if any, to be paid to the owner. *Id.* sec. 29.

Warehouseman or elevatorman, guilty of negligence—punished, how:—Any warehouseman or elevatorman proved guilty of any act of negligence the effect of which is to depreciate the condition of property stored, transferred or handled in the warehouse or elevator under his control, shall be held responsible upon the bond given for such warehouse or elevator, and in addition thereto, the license given for such warehouse or elevator shall be revoked by a proceeding as hereinbefore stated. *Id.* sec. 30.

Commissioner to be furnished statement:—It shall be the duty of every owner, lessee or manager of every public warehouse or elevator in this state to furnish in writing, under oath,

at such times as such commissioner shall require and prescribe, a statement concerning the condition and management of his business as such warehouseman or elevatorman. *Id.* sec. 31.

Printed copies of this article to be posted, where:—All proprietors or managers of public warehouses or public elevators in this state shall keep posted at all times in a conspicuous place in their offices, and in each of their warehouses or elevators, a printed copy of this article. *Id.* sec. 32.

Inspectors and owners may examine all property—scales may be examined and tested, when—by whom:—All persons owning property, or who may be interested in the same, stored or handled in any public warehouse or public elevator created by this article, and all duly authorized state inspectors of such property, shall at all times during ordinary business hours be at full liberty to examine any and all property in any public warehouse or elevator in this state, and all proper facilities shall be extended to such persons by the warehouseman or elevatorman, his agents and servants, for an examination; and all parts of public warehouses or public elevators shall be free for the inspection and examination of any person interested in property therein, or by any authorized state inspection of such property. All scales used for the weighing of property in public warehouses or public elevators shall be subject to examination and test by any duly authorized state scale inspector, and no scales shall be used for the weighing of grain after being found incorrect until put in order and found accurate and approved for further use by an authorized state scale inspector. *Id.* sec. 33.

Violation—penalty:—A violation of any of the preceding provisions of this article, except in cases covered by sections 11, 25 and 30 by any warehouseman or elevatorman, owner, lessee, manager or employee of public warehouses or elevators created by this act is declared a misdemeanor, and upon conviction thereof, the violator shall be fined not less than one thousand nor more than five thousand dollars, one-fourth of such fine to be awarded and paid to the informer of such misdemeanor. *Id.* sec. 34.

Warehouseman or elevatorman—prosecution of—duty of prosecuting attorney:—In all criminal prosecutions against

a public warehouseman or public elevatorman for the violation of any of the provisions of this article, it shall be the duty of the prosecuting attorney of the county in which such prosecution is brought, or if in the city of St. Louis, the duty of the prosecuting attorney of said city, to prosecute the same to a final issue in the name and on behalf of the people of the state of Missouri. *Id.* sec. 35.

Warehouseman or elevatorman—suit may be brought aginst —how—when:—If any warehouseman or elevatorman shall be guilty of a violation of any of the provisions of this article, to the injury of any person by such violation, it shall be lawful for such injured person to bring suit in any court of competent jurisdiction upon the bond of such warehouseman or elevatorman in the name of the people of the state of Missouri, to the use of such person. *Id.* sec. 36.

Chief inspector to have general supervision:—It shall be the duty of the chief inspector provided for by this article, to have a general supervision of the inspection of grain as required by this article or laws of this state, under the advice and immediate direction of the commissioner. *Id.* sec. 37.

Commissioner to appoint deputy chief inspector and assistants:—The commissioner shall appoint such suitable persons in sufficient numbers as he may deem qualified for deputy chief inspector, to be acting chief inspector in the absence of the chief inspector, and assistant inspectors, who shall not be interested in any warehouse, and also such other employees as may be necessary to properly conduct the business of the grain inspection and weighing departments. *Id.* sec. 38.

Chief inspector—oath and bond of:—The chief inspector shall, upon entering upon the duties of his office, be required to take an oath that he will faithfully and strictly discharge the duties of his said office of inspector according to law and the rules and regulations prescribed by the commissioner. He shall execute a bond to the people of the state of Missouri in the penal sum of twenty thousand dollars, with sureties to be approved by the commissioner, conditioned that he will pay all damages to any person or persons who may be injured by reason of his neglect, refusal or failure to comply with the laws and the rules and regulations adopted by the commissioner. *Id.* sec. 39.

Deputy chief inspector and assistants—duties—report of—oath—bond—may be sued:—The deputy chief inspector and all assistant inspectors appointed under this article shall be under the supervision of the chief inspector, to whom they shall report in detail all services performed by them at the close of each working day. The deputy chief inspector and each assistant inspector shall take the same oath as the chief inspector, and execute a bond in the penal sum of ten thousand dollars, with like conditions and to be approved in like manner as provided for the bond of the chief inspector, which bonds shall be filed in the office of said commissioner. Suit may be brought upon bonds of either the chief inspector, deputy chief inspector or assistant inspectors in any court having jurisdiction thereof, in the county or city where the defendant resides, for the use of any person injured by any act of said chief inspector, the deputy chief inspector or assistant inspectors. *Id.* sec. 40.

Commissioner to make rules and regulations—Chief inspector, deputy and assistants to be governed by same—fees, paid where:—The chief inspector of grain, the deputy chief inspector, assistant inspectors and other employees in connection therewith, shall be governed in their respective duties by such rules and regulations as may be prescribed by the commissioner, and the said commissioner shall have full power to make all proper rules and regulations for the inspection of grain, not inconsistent with this article, to include the fixing of charges for the inspection of grain and other duties of said chief inspector, deputy chief inspector and assistant inspectors, and to make rules for the collection of same, which charges shall be regulated in such manner as will, in the judgment of the commissioner produce sufficient revenue to meet the necessary expenses of the service of inspection and no more. All fees collected shall be paid monthly into the state treasury and become a part of the general revenue fund of the state, the earnings of each month to be paid into the said treasury on or before the 20th day of the month following the one during which such fees were earned. *Id.* sec. 41.

Malfeasance of inspectors—penalty:—Any duly authorized chief inspector, deputy chief inspector or assistant inspector of grain under this article who shall be guilty of neglect of duty, or who shall knowingly or carelessly inspect or grade any grain

improperly, or who shall accept any money or other valuable consideration, directly or indirectly, for any neglect of duty as such chief inspector, deputy chief inspector or assistant inspector, or any person who shall improperly influence any chief inspector, deputy chief inspector or assistant inspector of grain under this article in the performance of his duties as such inspector, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in a sum not less than five hundred dollars nor more than one thousand dollars, or shall be imprisoned in the county jail, or if in the city of St. Louis, the jail of said city, not less than six nor more than twelve months, or both such fine and imprisonment, in the discretion of the court. *Id.* sec. 43.

Imposters—punished, how:—The inspection or grading of grain in this state, whether into or out of warehouses, elevators, or in cars, barges, wagons or sacks arriving at or shipped from points where state grain inspection is established, must be performed by such persons as may be duly appointed by the commissioner, sworn and have given bond under this article, and any person or persons who shall assume to act as an inspector of grain who has not been duly appointed by the commissioner, sworn and given bond under this article, shall be held to be an imposter, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment in the county jail, and if in the city of St. Louis, in the city jail of said city, for not less than three months nor more than six months, or both such fine and imprisonment, at the discretion of the court, for every such offense so committed. *Id.* sec. 44.

Complaint against employees of commissioner—how made—penalty:—Upon complaint in writing of any person to the said commissioner, supported by satisfactory proof, that any person appointed or employed by said commissioner, under the provisions of this article, has violated any of the rules prescribed for his government, or has been guilty of any improper official act, or has been found incompetent for the duties of his position, such person shall be removed from his employment by the same authority that appointed him and his place shall be filled if necessary, by a new appointment. When it shall be deemed necessary to reduce the number of persons appointed or employed their terms of service shall cease under the orders

of the same authority by which they were appointed or employed. *Id.* sec. 45.

Committee—appeals may be made to for arbitration:—In all matters involving doubt on the part of the chief inspector, the deputy chief inspector, or any assistant inspector, as to the proper inspection into or out of any warehouse or elevator created by this article, or in case any owner, consignee or shipper of grain or any warehouse or elevator manager, shall be dissatisfied with the decision of the chief inspector, the deputy chief inspector or any assistant inspector, in matters pertaining to inspection, an appeal may be made to the committee hereinafter provided for, who shall at once convene, and whose decision, after a careful inquiry into the questions at issue, shall be final. *Id.* sec. 46.

Arbitration committee—appointment of:—The commissioner shall, as soon after the passage of this article as is practicable, appoint a committee for the adjustment of differences between inspectors and warehousemen and elevatormen, owners or representatives of owners of grain, arising from the acts of inspectors—each committee to consist of three persons well known as experts in grain; and a committee shall be appointed in each city or town where public warehouses or public elevators under this article are located, said committee to be known as the arbitration committee of the warehouse commissioner. *Id.* sec. 47.

Commissioner to make rules for arbitrators:—The commissioner shall make equitable and legal rules governing said committees' procedure, in the arbitration, the manner and amount of compensation, the method of appointment and terms of service. *Id.* sec. 48.

Commissioner to establish grades of grain:—The commissioner shall establish a proper number and standard of grades for the inspection of grain, with due regard to the prevailing usage of the markets of this state, and the interests of both producers and dealers, and as near as may be to conform with standards of grade adopted by leading markets of the United States: Provided, no modification or changes of grade shall be made, or any new ones established, without public notice being given of such changes at least thirty days prior to the date that such changes shall take effect, by officially notifying

the secretaries of all boards of trade in this state, and such secretaries are required to post the notification of such change or changes on the floor of the exchange; and provided further, that no mixture of old or new grades, even though designated by the same name, or distinction, shall be permitted while in store, except as in this article provided. *Id.* sec. 49.

Commissioner to report to governor:—The commissioner shall, on or before the first day of January of each year, make a report to the governor of his doings for the preceding year, to contain such facts as will disclose the actual working of the system of the warehouse business of this state, as contemplated by this article, and such suggestions thereto as to him may appear pertinent. *Id.* sec. 50.

Commissioner to examine and visit warehouses and elevators, when—how often:—Said commissioner shall examine into conditions and management and all matters concerning the business of warehouses and elevators under this article in this state, so far as the same may pertain to the relations of such warehouses or elevators to the public, and to the security and convenience of persons doing business therewith, and to ascertain whether the officers, directors, managers, lessees, agents and employees comply with the laws of this state now in force, or to be in force concerning such warehouses or elevators. Whenever it shall come to his knowledge, or he shall have reason to believe that any law governing the public warehouses or elevators of this state under this article is being or has been violated, he shall cause to be prosecuted or prosecute all persons guilty of such violation. To enable said commissioner to efficiently perform his duties under this article it is hereby made his duty, at least once in six months, to visit each warehouse or elevator in this state and personally inquire into the management of such warehouse or elevator business. *Id.* sec. 51.

Commissioner may examine all books, etc., and owners and employees:—The property, books, records, accounts, papers and proceedings of all such warehousemen or elevatormen, as are contemplated by this article shall at all times during business hours be subject to the examination and inspection of the commissioner, and he shall have power to examine, under oath, any owner, manager, lessee, agent or employee of a public warehouse, or public elevator, and any other person, concerning the

condition and management of such warehouse or elevator. *Id.* sec. 52.

Commissioner may subpoena witnesses:—In making any examination as contemplated by this article, or for the purpose of obtaining information as contemplated by this article, said commissioner shall have the power to issue subpoenas for the attendance of witnesses and may administer oaths. In case any person shall willfully refuse to obey such subpoena, it shall be the duty of the circuit court of any county, if in St. Louis the circuit court of said city, upon application of said commissioner, to issue an attachment for such witness and compel such witness to attend before the commissioner and give his testimony upon such matters as shall be lawfully required by such commissioner; and the said court shall have power to punish for contempt as in other cases of refusal to obey the process and order of such court. *Id.* sec. 53.

Failure to obey subpoena—penalty:—Any person who shall willfully neglect or refuse to obey the process of subpoena issued by said commissioner, and appear and testify as therein required, shall be guilty of a misdemeanor, and shall be liable to arraignment and trial in any court of competent jurisdiction, and on conviction thereof shall be punished for each offense by a fine of not less than twenty-five dollars nor more than five hundred dollars, or by imprisonment of not more than thirty days, or by both such fine and imprisonment in the discretion of the court before which such conviction shall be had. *Id.* sec. 54.

Attorney-general and prosecuting attorney—duty of:—It shall be the duty of the attorney-general and the state's attorney in every county, if in cases brought in St. Louis, the state's attorney for said city, or on the request of said commissioner to institute and prosecute any and all suits or proceedings which they or either of them shall be directed by said commissioner to institute and prosecute for a violation of this article or any law of this state concerning public warehouses or public elevators as constituted by this article, or the officers, employees, owners, operators or agents of such warehouses or elevators. *Id.* sec. 55.

Prosecutions to be in name of state:—All prosecutions under this article shall be in the name of the people of the state

of Missouri, and all moneys arising therefrom shall be paid into the state treasury by the sheriff or other officer collecting the same: Provided, this article shall not be construed so as to prevent any person entitled to receive a percentage of fines imposed and collected, as a reward for information furnished as hereinbefore stated, which percentage shall be paid to such person by the officer collecting such fine. *Id.* sec. 56.

Common law remedy—Persons not to be deprived of:—Nothing in this article shall deprive any person of any common law remedy now existing. *Id.* sec. 57.

Prosecution for damages—rights of injured person not affected:—This article shall not be construed so as to waive or affect the right of any person injured by the violation of any law in regard to warehouses or elevators from prosecuting for his private damages in any manner allowed by law. *Id.* sec. 58.

Weighmasters, appointment of—duties of—to have control of scales:—The commissioner shall appoint suitable persons to act as weighmasters at such places in this state where state grain inspection and weighing may be established in conformity with the provisions of this article; said weighmasters shall at the places aforesaid, supervise the weighing of all grain which may be subject to inspection and weighing, and at all warehouses or elevators where there are no such scales as hopper scales, there shall be provided in such case by the warehouseman or elevatorman or railroad company, upon the order of the commissioner, track or other proper scales upon which the gross, tare and net weight of each car, wagon or other package shall be taken, but at all warehouses or elevators having hopper scales the net weight of grain contained in each car, wagon or other package shall be taken on such scales and certificate of weight of such weighmasters in the discharge of their aforesaid duties shall be prima facie the basis of settlement between the buyer and seller. And such state weighmaster shall have the entire control of such scales. *Id.* sec. 59.

Fees—to be fixed by the commissioner—to whom paid—by whom paid:—The commissioner shall fix the fees to be paid for the weighing of grain, which fees shall be paid by the warehouseman or elevatorman, but on grain not going into such warehouse or elevator the fee shall be paid by the consignee, and may be added to the charges for storing, transferring,

handling, mixing or commission, and the said commissioner shall adopt such rules and regulations for the weighing of grain as he shall deem proper. *Id.* sec. 60.

Scales to be furnished—by whom—to be located, where—grain in store to be weighed—notice to be given—report:—It shall be the duty of the person or persons doing a public warehouse or public elevator business under this article to provide and maintain suitable scales upon which all grain tendered to him or them for storage, transferring, handling or mixing shall be weighed under the supervision of a state weighmaster, as provided for in this article. Said scales shall be located at the most convenient point upon the track of some railroad running into or adjoining such warehouse or elevator. It shall further be the duty of the person or persons doing a public warehouse or public elevator business under this article, at some convenient time, at least once a year or when the commissioner orders it, after giving fifteen days' notice, and under the supervision of an authorized state weighmaster and inspector of the state grain inspection department, to weigh and inspect all grain at such time or times then in such warehouse or elevator, and to report to the warehouse registrar the result of such weighing and the actual amount of each kind and grade in such warehouse or elevator. During such time as such weighing is going on, the receiving and shipping of grain into and from such warehouse or elevator shall be discontinued until such general weighing has been completed. *Id.* Sec. 61.

Railroads to furnish scales to weigh grain handled by them—scales to be located where:—At all terminal or other points within this state wherever state grain inspection may be established, it shall be the duty of all railroads to provide, on the order of the commissioner, suitable wagon scales in their unloading yards, upon which all grain handled by them subject to inspection and weighing may be weighed as required by this article. Said scales shall be located at places to be designated by the commissioner and it shall be the duty of said commissioner to see that the provisions of this article are strictly enforced. *Id.* Sec. 62.

Weight certificates not to be issued except by bonded state weigher—false or untrue certificates given out—penalties:—It shall be unlawful for any person, corporation or association

other than a duly authorized and bonded state weigher to issue any weight certificate or to issue or sign any paper or ticket purporting to be the weight of any car, wagon, sack or other package of grain weighed at any warehouse or elevator in this state where duly appointed and qualified state weighers are stationed and in control of the scales under the provisions of this article, or to make any charge for such weighing, or purported weighing, or weight certificates, or tickets or purported weight certificates or tickets. And any person, corporation or officer, agent or servant of such corporation who shall do any of the acts declared by this section to be unlawful, shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than five hundred dollars, nor more than one thousand dollars, or shall be imprisoned in the county jail, or if in the city of St. Louis, the jail of said city, not less than six months nor more than twelve months, or by both such fine and imprisonment. And any weighmaster who shall knowingly falsely weigh any grain or shall knowingly give any false or untrue certificates as to the weight of grain, or who shall knowingly violate any of the provisions of this article, shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars, or shall be imprisoned in the county jail, or if in the city of St. Louis, in the jail of said city, not less than six months nor more than twelve months, or by both such fine and imprisonment. *Id.* Sec. 63.

Weighmasters — bond of — compensation: — The weighmasters provided for in this article shall each give a bond in the sum of five thousand dollars, conditioned for the faithful discharge of their duties and shall recive such compensation as the commissioner shall determine. *Id.* Sec. 64.

Emergency:—There being no adequate provisions of law for state inspection and weighing of grain as provided for herein, and this act being deemed of immediate importance, an emergency exists within the meaning of the Constitution, therefore, this act shall take effect and be in force from and after the fifteenth day of April, 1913. *Id.* Sec. 65.

Inspection of tobacco—Term of office and qualifications of inspector:—There is hereby established in the city of St. Louis, Missouri, a tobacco inspection. The governor shall ap-

point in the city of St. Louis an inspector of tobacco, who shall hold his office for two years; said inspector shall be a discreet, suitable person, and shall not be interested in any of the tobacco warehouses selling leaf tobacco in the city of St. Louis as a stockholder or otherwise than as tobacco inspector. Rev. Stats. Mo., 1909, sec. 6852.

Duties of inspector.—No inspector shall either buy or sell any tobacco, except of his own raising, but shall auctioneer and cry off all inspected and leaf tobacco, for the owner or agent, sold at the warehouse. *Id.* sec. 6853.

His bond:—The inspector shall, before he enters upon the duties of his office, enter into bond to the city of St. Louis, to be approved by the mayor of said city, with sufficient security, in a sum not less than ten thousand dollars, conditioned for the faithful performance of his duties according to law, which bond shall be recorded in the office of the city register and filed in the office of the secretary of state, and a certified copy thereof shall be evidence. *Id.* sec. 6854.

Book to be kept by him:—The inspector shall keep a book, in which shall be entered the marks of all tobacco which he may be required to inspect, and he shall inspect and examine the same in due time as it shall be entered in such book, unless otherwise agreed, without favor or partiality, and shall attend at the respective warehouses during all business hours of each regular secular day, whenever called on so to do. *Id.* sec. 6855.

Penalty for failing to attend:—Any inspector failing to attend when so requested shall forfeit to the party aggrieved fifty dollars for every such failure, or the aggrieved party may recover all damages he may have sustained by such failure by action on the bond of inspector or by civil action. *Id.* sec. 6856.

Charges and fees—By whom paid:—The purchaser and seller shall each pay one half of all warehouse charges, including inspection fees, on all tobacco sold, but when the sale of any tobacco offered is rejected, then the owner or agent shall pay the whole of the warehouse charges, including the inspection fees. *Id.* sec. 6857.

Warehousekeeper to have tobacco inspected:—Any person or persons who may erect or shall keep a tobacco warehouse in the city of St. Louis, for the purpose of offering and selling leaf

tobacco prized in hogsheads, shall have such tobacco inspected before sale, by the state inspector appointed in and for the city of St. Louis, and by no other. *Id.* sec. 6858.

Oath of inspector:—The oath of the inspector shall be in the form following: I, ——, do solemnly swear that I will carefully and diligently inspect and examine all tobacco which I may be called on to inspect, and that I will not change, alter or give out any tobacco as a sample other than such as shall have been taken from the hogshead for which the receipt to be taken was given, and that I will not, directly or indirectly, be engaged in the manufacturing, shipping or exportation of tobacco, nor will I deal in any manner in the article during the time that I shall continue in office, except as expressly permitted by law, but that I will in all things well and faithfully discharge and perform my duty in the office of inspector, according to the best of my skill and judgment, and according to the direction of the law, without fear, favor or affection, malice or partiality, so help me God. *Id.* sec. 6859.

To be filed, where:—Such oath shall be filed in the office of the secretary of state, and a violation thereof shall be deemed perjury, and shall subject the party, upon conviction, to the penalties of perjury. *Id.* sec. 6860.

Hogsheads to be weighed and branded before inspection:—The inspector of tobacco shall, before any hogshead of tobacco is uncased for inspection by him, cause the same to be carefully weighed and the gross weight marked or branded thereon. *Id.* sec. 6861.

Mode of inspection:—After a hogshead has been thus weighed and marked and branded, the inspector shall uncase and break the same in not less than two nor more than four places, and take from each break a like proportion of tobacco as a sample of the whole hogshead that he may inspect, and each hogshead shall be by him carefully weighed in the scales or the balance, and with the weight kept in the warehouse, and shall be by him marked with the tare of the hogshead, and the quantities of tobacco therein contained, and also with the words "Missouri State Tobacco Inspection." *Id.* sec. 6862.

Tare and net weight:—The tare, with the addition of ten pounds for weight of sample, shall be deducted from the gross

weight; the remainder shall be the net weight, and the inspector shall in all cases deliver to the owner or the purchaser of any hogshead of tobacco the samples which were drawn from the same. Whenever any hogshead of tobacco shall have been weighed under the superintendence of the inspector, and the net weight registered and marked on such hogshead of tobacco, he shall be responsible to the purchaser, owner or agent of the same for the net weight of tobacco so registered and marked on such hogshead of tobacco, reasonable allowance being made for waste in handling. *Id.* sec. 6863.

Samples to be done up, how:—It shall be the duty of the inspector to have all samples of tobacco drawn by him well tied, tagged and sealed; the card or tag so placed upon the sample shall contain the number, gross weight, net weight and date of inspection, and the seal so used shall contain the words "Missouri State Tobacco Inspection." *Id.* sec. 6864.

Form of certificate of inspection:—The inspector shall issue a certificate to the owner or agent for each hogshead of tobacco by him inspected, which shall, as near as possible, be in the form following: At ——— warehouse in the city of St. Louis, in the state of Missouri, this ——— day of ———, 19—, inspected for ——— one hogshead of leaf tobacco (strips, scraps or stems, as the case may be), number, mark and weight as follows: Number 1, marks 1, gross 1, tare 1, net 1. Witness my hand, the day and year aforesaid.

A———, Inspector.

And the keeper or superintendent of any warehouse where such tobacco is left on storage shall, upon every certificate issued by the inspector, certify upon the face of the same that said tobacco is on storage and deliverable only on return of said certificate to the holder thereof. *Id.* sec. 6865.

Hogshead to be restored to good shipping order:—It shall be the duty of the inspector to attend and see that after the uncasing and inspection of the hogshead of tobacco the same to be replaced to its former condition, and in good shipping order, and that all leaf tobacco belonging to each and every hogshead so opened and inspected be put back as near as possible to where it belonged before the same was uncased. *Id.* sec. 6866.

Inspector's fees:—For every hogshead of tobacco inspected in the city of St. Louis, the inspector shall receive twenty-five cents inspection fee, which may be collected with the other warehouse fees. *Id.* sec. 6867.

Penalty for unauthorized inspection:—If any person other than the inspector shall inspect any hogshead of tobacco within the city of St. Louis, or if any person occupying any store, or warehouse within the city of St. Louis shall suffer or permit any person other than the inspector to inspect any hogshead of tobacco upon the premises occupied by him, such person inspecting the tobacco, and such person or persons suffering or permitting such illegal inspection, shall each be fined in the sum of one hundred dollars for every hogshead of tobacco so inspected to the use of the state, to be recovered by indictment. *Id.* sec. 6868.

Scales and hands, by whom furnished:—No inspector shall be required to furnish scales or hands to strip or break tobacco, but the same shall be furnished by the warehouse or any person or persons that may have tobacco inspected in the city of St. Louis. *Id.* sec. 6869.

Fraudulently packed hogsheads to be marked, how:—In case the inspector in the inspecting or sampling of any hogshead of tobacco shall find any evidence or indication of its being falsely or fraudulently packed, it shall be his duty to write across the face of his certificate and across the face of the tag in red ink, "falsely or fraudulently packed," and he shall further give notice to the assembly of dealers before offering said hogshead of tobacco for sale. *Id.* sec. 6870.

Appointment and qualification of deputies:—The inspector is hereby empowered, if necessary to the convenient dispatch of his respective duties, to appoint one or more deputies at his own cost, for whom he shall be accountable, which deputies are hereby empowered to perform the duties of inspection, and shall be liable to the same penalties as the inspector; said deputies shall take the same oath as prescribed for the inspector, and for whose official conduct the said inspector shall be liable upon his official bond. *Id.* sec. 6871.

Inspectors and warehousekeepers not responsible for natural loss in weights:—Section 7609 shall not be construed so as to hold the inspector and warehousekeeper, or either of them, re-

sponsible for the natural losses of weight that may occur or take place during storage and while the same is undergoing the sweat to which leaf tobacco is subject. *Id.* sec. 6872.

Sales of tobacco to be approved by the owner:—All tobacco cried off, or offered for sale, shall be subject to the approval of the owner or agent thereof, but it shall be the duty of the said owner or agent to accept or reject the sale of said tobacco before the tobacco sale is over on that day; but in the event of his failure to accept or reject such sale within the time specified as above, it shall be at the option of the purchaser to accept the terms of said sale. *Id.* sec. 6873.

Certificates of inspection negotiable:—The certificate of a hogshead of tobacco issued by the inspector of tobacco, and countersigned by the keeper or superintendent of the warehouse, shall be negotiable, and the warehouse, store, person or persons under whose charge the package or hogshead of tobacco for which said certificate was issued is stored, shall be responsible for the full value of the same to the holder of said certificate, loss or damage from elemental causes alone excepted. *Id.* sec. 6874.

Appointment of local inspectors in other towns:—Nothing in this article shall be so construed as to prevent any other town, city or county from establishing tobacco inspection, when twenty-five freeholders shall petition the governor for the appointment of a tobacco inspector for such local inspection: *Provided,* said inspector so appointed by the governor shall be subject to all the provisions of this article relating to the qualifications, duties and fees of the tobacco inspector for the city of St. Louis, except so far as regards the matter of residence and filing his bond. *Id.* sec. 6875.

Limit of warehouse fees:—The warehouse fees shall not exceed three dollars for each hogshead, including inspection fee at any one offer. *Id.* sec. 6876.

Remedy for non-payment of rent for safes:—Any corporation which has been authorized, or may hereafter be authorized, to own or control a safety vault and rent the boxes therein, may, if the amount due for the use of any safe or box in the vault of such corporation shall not have been paid for two years, at the expiration thereof, cause to be sent to the person in whose

name such safe or box stands on its books, a notice, in writing, in a securely closed postpaid registered letter, directed to such person at his postoffice address as recorded upon the books of the corporation, notifying such person that if the amount then due for the use of such safe or box is not paid within sixty days from the date of such notice, the corporation will then cause such safe or box to be opened, in the presence of its president, or vice-president, or secretary, or treasurer, and of a notary public not an officer or in the employ of the corporation, and the contents thereof, if any, to be sealed up by such notary public in a package, upon which such notary public shall distinctly mark the name and address of the person in whose name such box or safe stands upon the books of the corporation, and the estimated value thereof; and the package so sealed and addressed, when marked for identification by such notary public, will be placed by such notary public in one of the general safes or boxes of the corporation, and retained by the corporation, subject to the payment of all rent that may be unpaid, and of all expenses incurred in opening the safe or box, and also of a reasonable compensation for the safe-keeping of the contents after their removal from the safe or box. *Id.* sec. 1128.

Failure to properly account, penalty:—If any warehouseman, storage, forwarding or commission merchant, or any other person selling on commission or for a percentage on sales made by him, or any person receiving goods on condition that he is to pay a certain price or value to the owner or shipper when such goods are sold, or if the agent, clerk or servant of any such person shall convert to his own use any produce, cattle, hogs, cotton, flour or other property of any description whatsoever, or the proceeds or avails thereof, without the consent of the owner thereof, or shall fail to pay over the proceeds or avail thereof, less his proper charges, on the demand of the person entitled thereto, or his duly authorized agent, he shall be adjudged guilty of a misdemeanor, and shall, on conviction, be punished by a fine not exceeding one thousand dollars nor less than one hundred dollars or confined in the county jail or workhouse not longer than one year nor less than sixty days, or shall be punished by both such fine and imprisonment, and shall be liable to the person injured in double the value of the property or money so converted. *Id.* sec. 4583.

Common carriers may retain goods until charges are paid:—When any goods, merchandise or other property shall have been received by any railroad or express company, or other common carrier, commission merchant or warehouseman, and shall not be received by the owner, consignee, or other authorized person, it shall be lawful to hold the same by said carrier, commission merchant or warehouseman, or the same may be stored with some responsible person and be retained until the freight and all just and reasonable charges be paid. *Id.* sec. 8274.

Property unclaimed to be sold, how:—If no person calls for said goods, merchandise or other property, within sixty days from the receipt thereof, and pay freight and charges thereon, it shall be lawful for such carrier, commission merchant or warehouseman, to sell such goods, merchandise or other property, or so much thereof at auction, to the highest bidder, as will pay said freight and charges, first having given twenty days' notice of the time and place of sale to the owner, consignee or consignor, when known, and by advertisement in a daily paper, or if in a weekly paper, four weeks, published where such sale is to take place; and if any surplus be left after paying freight, storage, cost of advertising, and all other just and reasonable charges, the same shall be paid over to the rightful owner of said property at any time thereafter, upon demand being made therefor, within sixty days. *Id.* sec. 8275.

Money not to be loaned to exceed what amount, etc:—No incorporated or private bank in this state shall loan its money to any individual, corporation or company, directly or indirectly, or permit any individual, corporation or company to become at any time indebted or liable to it in a sum exceeding twenty-five per cent of its capital stock actually paid in, or permit a line of loans or credits to any greater amount to any individual or corporation; a permanent surplus, the setting apart of which shall have been certified to the bank commissioner, and which cannot be diverted without due notice to said officer, may be taken and considered as a part of the capital stock for the purposes of this section: *Provided*, said surplus is equal to or in excess of fifty per cent of the capital stock of said bank: *Provided*, that the provisions in this section shall not be so construed as in anywise to interfere with the rules and regulations of any clearing association in this state in reference to the daily balances

between banks: *Provided*, that this section shall not apply to balances due from correspondents subject to draft; *and provided further*, that the discount of the following classes of paper shall not be considered as money borrowed within the meaning of this section, viz.: (1) The discount of bills of exchange drawn in good faith against actually existing values. (2) The discount of paper based upon the collateral security of warehouse receipts covering agricultural and manufactured products in store in elevators and warehouses under the following conditions: First, that the actual market value of the property held in store and covered by such receipts shall at all times exceed by at least twenty per cent the amount loaned upon the same. Second, that the full amount of the loans shall at all times be covered by policies of fire insurance issued by companies admitted to do business in this state to the extent of their ability to cover such loans, and then by companies having sufficient paid-up capital to be so admitted, and all such policies shall be made payable in case of loss to the bank or holder of the warehouse receipts. *Id.* sec. 1110.

Shipments of grain in bulk:—Every railroad corporation which shall receive any grain in bulk for transportation to any place within the state shall transport and deliver the same to any consignee, elevator, warehouse or place to whom or to which it may be consigned and directed: *Provided,* such person, warehouse or place can be reached by any track owned, leased or used, or which can be used by such corporation; and every such corporation shall permit connections to be made and maintained with its track to and from any and all public warehouses where grain is or may be stored. Any such corporation neglecting or refusing to comply with the requirements of this section shall be liable to all persons injured thereby for all damages which they may sustain on that account, whether such damages result from any depreciation in the value of such property, by such neglect or refusal to deliver such grain as directed, or in loss to the proprietor or manager of any public warehouse to which it is directed to be delivered, and costs of suit, including such reasonable attorney's fees as shall be taxed by the court. And in case of any second or later refusal of such railroad corporation to comply with the requirements of this section, such corporation shall be, by the court, in an action on which such failure or refusal shall be found, adjudged to pay, for the use of the

people of this state, a sum of not less than one thousand nor more than five thousand dollars, for each and every such failure or refusal, and this may be a part of the judgment of the court in any second or later proceeding against such corporation. In case any railroad corporation shall be found guilty of having violated, failed or omitted to observe and comply with the requirements of this section, or any part thereof, three or more times, it shall be lawful for any person interested to apply to a court of competent jurisdiction, and obtain the appointment of a receiver to take charge of and manage such railroad corporation until all damages, penalties, costs and expenses adjudged against such corporation for any and every violation shall, together with interest, be fully satisfied. *Id.* sec. 3153.

Consignments to elevators, etc., declared temporary:—All consignments of grain to any elevator or public warehouse shall be held to be temporary, and subject to change by the consignee or consignor, at any time previous to the actual unloading of such property from the cars in which it is transported. Notice of any change in consignment may be served by the consignee or any agent of the railroad corporation having the property in possession, who may be in charge of the business of such corporation at the point where such property is to be delivered; and if, after such notice, and while the same remains uncancelled, such property is delivered in any way different from such altered or changed consignment, such railroad corporation shall, at the election of the consignee or person entitled to control such property, be deemed to have illegally appropriated such property to its own use, and shall be liable to pay the owner or consignee of such property the value of the property, and shall forfeit and pay to the owner or consignee the sum of twenty-five dollars, to be recovered by civil action before any court of competent jurisdiction, and no extra charge shall be permitted by the corporation having the custody of such property in consequence of such change of consignment. *Id.* sec. 3154.

Time allowed for removing grain from cars:—Any consignee or person entitled to receive the delivery of grain transported in bulk by any railroad shall have forty-eight hours, free of expense, after actual notice of arrival by the corporation to the consignee, in which to remove the same from the cars of such railroad corporation if he shall desire to receive it from

the cars on the track, which forty-eight hours shall be held to embrace such time as the car containing such property is placed and kept by such corporation in a convenient and proper place for unloading. And it shall not be held to have been placed in a proper place for unloading unless it can be reached by the consignee or person entitled to receive it, with teams or other suitable means for removing the property from the car, and reasonably convenient to the depot of such railroad corporation at which it is accustomed to receive and unload merchandise consigned to that station or place. Nothing herein contained, however shall be held to authorize the changing of any consignment of grain except as to the place at which it is to be delivered or unloaded, nor shall such change of consignment in any degree affect the ownership or control of property in any other way. *Id.* Sec. 3155.

No discrimination allowed in shipping grain—Grain to be weighed and shortage made up:—Every railroad corporation chartered by or organized under the laws of this state, or doing business within the limits of the same, when desired by any person wishing to ship any grain over its road, shall receive and transport such grain, in bulk or otherwise, within a reasonable time, and load the same either upon its track, at its depot, or at any warehouse adjoining its track or side track, without distinction, discrimination or favor between one shipper and another, and without distinction or discrimination as to the manner in which such grain is offered to it for transportation, or as to the person, warehouse or place to whom or to which it may be consigned; and at all stations where scales are required to be kept, at the time such grain is received by it for transportation, such corporation shall carefully and correctly weigh the same, and issue to the shipper thereof a receipt or bill of lading for such grain, in which shall be stated the true and correct weight, and such corporation shall weigh out and deliver to such shipper, his consignee or other person entitled to receive the same, at the place of delivery, the full amount of such grain, without any deduction for leakage, shrinkage or other loss in the quantity of the same, except that one half of one per cent shall be allowed for leakage, shrinkage or other loss on bulk grain. In default of such delivery, the corporation so failing to deliver the full amount of such grain shall pay to the person entitled thereto the full market value of

any such grain not delivered at the time and place when and where the same should have been delivered. *Id.* sec. 3156.

Game commissioner may examine packages—penalty for refusal to allow examination:—All birds, animals or fish seized by the said game and fish commissioner shall be donated to some charitable institution in the county where such seizure was made. It is hereby made the duty of every warehouse, cold storage plant, merchant or common carrier, agent, servant or employee thereof, to permit the game and fish commissioner to examine any package in the possession of said warehouse, cold storage plant, merchant or common carrier, or agent, servant or employe thereof, which the said game and fish commissioner shall suspect or have reason to believe contains fish, birds or game protected by the laws of the state, and not entitled under such law to be transported or had in possession, or when the said game and fish commissioner shall suspect or have reason to believe that the said package is falsely labeled. Any person, firm or corporation refusing the game and fish commissioner, or any officer charged with the enforcement of the game and fish laws, permission to examine or open any such package or impede such action by the game and fish commissioner, shall be punished by a fine of not less than fifty dollars nor more than one hundred and fifty dollars. Said game and fish commissioner shall not be liable for damages on account of any search, examination or seizure made in accordance with the provisions of this article. *Id.* Sec. 6364 .

NOTE: For other provisions of the Fish and Game Law see Ch. 49, Articles 1 and 2, being sections 6506 to 6591, Rev. Stats. Mo., 1909.

DECISIONS AFFECTING WAREHOUSEMEN

A.

Warehouse—Definition:—There is no technical meaning to the word warehouse different from its ordinary significance of storehouse. *The State* v. *Watson*, 141 Mo. 338; *The State* v. *Sprague*, 149 Mo. 409.

Bailment—Storage in a different place—Bailee responsible:—When a bailee is intrusted with goods for a particular purpose or to keep in a particular place he is responsible for loss caused by using them for a different purpose or keeping them in a different place. *Kennedy* v. *Portman et al.*, 97 Mo. App. 253, 255.

Bailment and sale—Option to pay for in money or other property, effect thereof:—Plaintiff deposited wheat in the defendant's warehouse; under the agreement between them, defendant was obliged to deliver a certain quantity of flour or of bran, proportional to the amount of wheat deposited. Before demand made, warehouse and contents were destroyed by fire. The court *held* that in view of the fact that the wheat of the various depositors was mingled with other wheat deposited, and that all of the depositors had a right to demand, according to the terms of the contract, so much flour and bran for each bushel of wheat deposited, and not the flour and bran manufactured out of the wheat deposited by them, such a transaction could be regarded in no other light than a sale, and was wholly inconsistent with the character of bailment. *O'Neil* v. *Stone,* 79 Mo. App. 279; *Martin* v. *Ashland Milling Co.,* 49 Mo. App. 23; *Smith* v. *Clark,* 21 Wend. 23, overruling *Seymour* v. *Brown,* 19 Johns. 44. See also *Hurd* v. *West,* 7 Cow. 752; *Pierce* v. *Schenck,* 3 Hill, 28; *Norton* v. *Woodruff,* 2 N. Y. 153; *Mallroy* v. *Willis,* 2 N. Y. 76.

B.

Ordinary care:—Warehousemen are only bound to take reasonable care of property and are only answerable for losses occasioned by default and neglect. *Gashweiler* v. *Wabash, St. Louis & Pacific R. R. Co.,* 83 Mo. 112; *Holtzclav et al.* v. *Duff,* 27 Mo. 392.

Same—What constitutes:—A warehouseman is a bailee, and the contract being for the return of specific articles stored upon demand of plaintiff, is one of bailment. The obligation of the warehouseman bailee is to exercise ordinary care to protect property entrusted to him; that is, to use such care and diligence looking to its safety as ordinarily prudent persons in that business are accustomed to exercise toward such property or in the care of their own property under similar circumstances. *Berger* v. *St. Louis Storage and Commission Co.,* 136 Mo. App. 36, 38.

Same—What constitutes—When a question for the jury and when for the court:—What constitutes a requisite diligence and care to be exercised by a warehouseman is always one to be determined by the jury, in view of the surrounding circumstances, when there is substantial evidence upon which to submit to them

such an issue; but in the absence of such evidence, it becomes a question of law to be determined by the court. *American Brewing Assn.* v. *Talbot et al.*, 141 Mo. 674.

Conversion—What constitutes:—The action of one in withholding property from the real owner thereof, when demand has been made upon him for it, is in law a conversion thereof. *Foster Woolen Co.* v. *Woolman*, 87 Mo. App. 658; *Rembaugh* v. *Phipps*, 75 Mo. 422.

G.

Government bonded warehouse—Vendor's lien—Non-negotiable receipt:—The plaintiff sued the defendant for the conversion of a number of barrels of whiskey, to which plaintiff alleged he was entitled, pursuant to the receipt issued therefor, by one who had purchased the whiskey from the defendant. It appeared that the defendant had not been paid in full for the whiskey when sold, but had accepted the purchaser's notes in payment of the balance due. Thereupon the whiskey was stored in a government bonded warehouse. The purchaser subsequently pledged the whiskey with the plaintiff, for the payment of a loan and, as security therefor, delivered to him a non-negotiable warehouse receipt. From the above facts, the court *held* that the warehouse receipt in question only had the effect of transferring the title of the whiskey to the plaintiff, as security for his debt, and was not for value in a sense that would extinguish the equitable right of the defendant to his vendor's lien, and that therefore, the defendant had a lien thereon for the amount of the unpaid purchase price. *Vogelsang's Admr.* v. *Fisher*, 128 Mo. 386.

Same—Vendor's lien not lost by placing goods therein—Nature of this lien considered:—Where whiskey was placed in a government bonded warehouse, it was *held* that the vendor's lien was not destroyed; that a delivery to such warehouse was not a delivery to the vendee so as to impair the lien of the vendor. The existence of the vendor's lien presupposes that the title to the goods has passed. It is in no sense a right to rescission, but, on the contrary proceeds in affirmation of the contract of sale. It is in the nature of a pledge raised or created by law upon the happening of the insolvency of the vendee, to secure

the unpaid purchase of money to the vendor. *Conrad* v. *Fisher*, 37 Mo. App. 352.

H.

Storage charges—On basis of quantum meruit where goods destroyed:—The defendant warehouseman undertook to store for a certain period a quantity of apples, also to unload, repack, load and ice the cars to protect the apples in travel, as well as to insure the apples for the benefit of the owners. For this he was to receive fifty cents per barrel. While in the warehouse and sometime before the apples were to be delivered, they were destroyed by fire. Defendant collected insurance for the full value and paid the owners, deducting, however, his charges of said fifty cents per barrel. Action by the owners against the warehouseman for the difference (i.e., the amount retained by him) *Held:* That no essential element was lacking of an implied promise to compensate the defendant *quantum meruit* and the cause remained for trial to determine the reasonable value of the service rendered by the defendant warehouseman. *Clough* v. *Stillwell Meat Co.*, 112 Mo. App. 177.

Warehouseman's lien—Goods stored by sheriff—Warehouseman protected—Lien highly favored by law:—The sheriff attached goods, in an action against the owner thereof, and stored them with the defendant warehouseman for safe-keeping. The judgment against the owner was discharged and the attachment released. The owner thereupon demanded the goods of the defendant, who refused to surrender the same unless his storage charges were paid, he claiming to have a lien against the goods therefor. The court *held* that the defendant's lien remained after the attachment was dissolved, and was as binding and as effectual as if the property had been stored by the plaintiff himself, instead of by the constable, who was authorized to do so by law. A warehouseman's lien is highly favored, and the law is against presuming a waiver or extinguishment of it. Further *held* that the possession by the sheriff was the same as possession by a receiver; in each instance the goods are in the custody of the court. *Case Plow Works* v. *Union Iron Works*, 56 Mo. App. 1; *Ward* v. *Moffett*, 38 Mo. App. 400; *Wycoff* v. *Southern Hotel Co.*, 24 Mo. App. 382; *Kneeland* v. *American Loan & Trust Co.*, 136 U. S. 89.

Same—Subordinate to right of mortgagee under chattel mortgage:—Where a mortgagor of goods, without the consent of the mortgagee, under a chattel mortgage, stored the same, it was *held* that the lien of the warehouseman, for charges, was inferior to the right of the mortgagee. *Vette* v. *Leonori*, 42 Mo. App. 217.

Same—Tender of amount due necessary to avoid lien—Excessive demand:—The mere fact that the demand, made by the bailee of property, was either premature or excessive did not avoid his lien from the amount justly chargeable to the bailor. If the bailee desired to terminate the lien all he had to do was to tender the amount which was justly due. *Muench* v. *Valley National Bank*, 11 Mo. App. 144; *Montieth* v. *Great Western Printing Co.*, 16 Mo. App. 450.

Storage charges—May only sell sufficient to cover same—When—Conversion—Where property to be sold consists of a large number of separate articles, which may be sold separately, and where some part, materially less than all, can clearly be sold for enough to pay all charges and costs, it is the duty of the warehouseman to sell no more than is reasonably necessary for that purpose. If the warehouseman wilfully sells more than is reasonably necessary he is guilty of a conversion of all thus sold. If he unnecessarily sells all of a large amount of valuable and separable property, when clearly less would have brought his claim he is guilty of a conversion of all. *Ward* v. *Morr Transfer and Storage Co.*, 119 Mo. App. 83.

L.

Replevin—Bailee may maintain:—A person in possession of goods as bailee may maintain an action of replevin against all persons except the true owner, and even against him if he has a lien for services, advances, and the like, upon them. *Snowden* v. *Kessler*, 76 Mo. App. 581.

Same—When property is and when it is not, in the custody of the law:—As to parties to a replevin suit, or their grantees or privies, the property is *in custodia legis* pending the determination of that suit, and cannot be sold by the party in possession or levied upon by either party, or their privies, but as to third persons the pendency of the replevin suit does not place the property *in custodia legis* and does not bar their right to proceed

against it by proper judicial process. *Mohr* v. *Langan*, 162 Mo. 474, 492.

M.

Pledge—Right to possession:—The pledgor has no right to the possession of the pledge until he pays, or offers to pay, what he owes. Any damage he sustains by the wrongful sale on account of injury actually done to his property, or expense of getting it back, he may recover by the appropriate action. But the pledge itself, or its value, he may only recover by keeping his undertaking. *Schaaf, Admr.,* v. *Fries*, 90 Mo. App. 111.

N.

Misdelivery—When warehouseman not liable:—A warehouseman is not responsible for the delivery of property intrusted to him to one who presents a proper bill of lading therefor, the warehouseman making proper inquiry, such as would be satisfactory to a prudent business man. *Bush* v. *St. Louis, K. C. & N. Ry. Co.*, 3 Mo. App. 62.

Same—When warehouseman liable:—The general rule of law that a bailee (in this case a warehouseman) having received the goods from the bailor cannot question his right to demand their return nor set up a paramount title in any one else, and no demand having been made upon him by the real owner, is not liable for a conversion of the goods in case he delivers them to the bailor, will not protect a bailee who, having notice of the rights of the real owner, yet aids and abets the bailor in wrongfully converting the goods. In this case the warehouseman had been a witness in a previous replevin suit, and consequently knew that other parties claimed title to the goods. *Mohr* v. *Langan*, 162 Mo. 474, 494.

Same—Estoppel:—Action against warehouseman for value of certain goods belonging to plaintiff. Plaintiff, whose name was H. C. S., stored certain household goods with defendant and received a receipt made out to "S. C. S." Plaintiff's wife, whose name was "S. C. S.," upon her presentation of the receipt received the goods and took them to a second-hand dealer who sold them. There was conflicting evidence as to the statements and conduct of plaintiff and defendant. The jury returned a verdict for plaintiff. *Held:* That it was for the jury to determine whether or not the conduct of plaintiff was such as to induce de-

fendants and the second hand dealer to believe that plaintiff would not seek to recover the goods or their value and that, acting upon such understanding the second dealer sold the goods. The court also held that the offer of plaintiff to buy the goods from the second hand dealer did not of itself estop him from his remedy against defendants. That plaintiff was not bound to pursue the property in the hands of the second hand dealer. Defendants urged that as the warehouse receipt was made out in the name of S. C. S., plaintiff's wife, they were justified in delivering the property to her. The court held no effort was made to show that defendants were induced to deliver the goods to her for that reason and that it had not been questioned that plaintiff was the owner and had deposited the goods with defendant. *Schroeder* v. *Reinhardt Bros.*, 123 Mo. App. 582.

Act of God—Lost by flood—Unprecedented rise in river—Burden of proof and the shifting thereof:—The defendants operated a warehouse situated upon the river front. After unprecedented rains, water arose in the cellar of the warehouse, and the defendants thereupon removed the goods stored to the upper portions thereof. Subsequently the warehouse collapsed. It was *held* that the warehouseman was not liable; that such result was from inevitable accident, or what is termed act of God. In such a case, the burden of proof is first upon the bailor to prove the contract and delivery of the goods, then upon the bailee to show the loss and manner thereof; the burden then again shifts to the bailor to establish that the loss was due to the bailee's negligence. *American Brewing Assn.* v. *Tolbot et al.*, 141 Mo. 674. See also *Fuchs* v. *St. Louis et al.*, 133 Mo. 168, the doctrine of which was challenged by Sherwood, J., in former decision.

Same—Same—Liable for lack of diligence:—Action for damage to cotton which had become injured by water in defendant's warehouse, caused by a flood. The defendant had due notice of the probability of the flood by weather bulletins and by calls from plaintiff and requests of plaintiff that the cotton be moved to a safer place. *Held:* That the defendant warehouseman owed the duty to its customers to exercise ordinary care and diligence to remove their cotton to a place of safety after defendant saw that it was likely to be submerged. *Prince & Co.* v. *St. Louis Cotton Compress Co.*, 112 Mo. App. 49, 64.

Same—Same—Same—Care required commensurate with exigencies of the situation:—The warehouse of defendant was located near a creek which drained a certain portion of the city. Before the unprecedented rain of 1905, plaintiff had stored with defendant certain merchandise plainly labeled to be kept in a dry cool place, which merchandise was placed in the basement. The building was equipped with an electric freight elevator which could be operated by one man from the basement. Defendant and defendant's agent knew that outside the warehouse there was a great deal of water and knew generally the extent of the flood. On the afternoon of the flood, an agent of plaintiff called at the warehouse, inquired as to the danger of water getting into the basement and was informed that there was none, but that there was some seepage in one corner. *Held:* That if defendant's negligence commingled with and operated as a contributive element proximate to the injury, it is liable even though such injury was due to an act of God. Defendant as proprietor of a warehouse, even in a calamity produced by flood, was charged with the duty of exercising care commensurate with the exigencies of the situation in which it and the goods were then placed and to protect those whom it served from apprehended danger. Judgment for plaintiff affirmed. *Johnson & Co.* v. *Springfield Ice and Refrigerating Co.*, 143 Mo. App. 441, 456.

Larceny and burglary—Warehouse and storehouse synonymous:—An indictment charged burglary and larceny from a storehouse. It was insisted, on behalf of the defendant, that the trial court erred in allowing evidence to be introduced for burglary of a warehouse and larceny therefrom. The court, answering the above contention, stated that as the defendant was guilty of burglary, it did not concern him if there was an improper designation of the building burglarized, and secondly, the words warehouse and storehouse were synonymous. *State* v. *Sprague*, 149, Mo. 409.

Damage to stored property—Cold storage—Evidence:—In an action to recover damages for negligent handling of butter stored with defendant the plaintiff claimed it had become injured by contact with a fruity or ammonia flavor. Evidence as to value and amount of damage considered and *held* to be such that damages could not be computed and that the verdict was the result

of guess work. It was further *held* to be error for the court to particularize certain evidence as to the method of inspection of the butter and tell the jury that it was sufficient to authorize them to find one way. Judgment for plaintiff reversed. *Disbrow* v. *People's Ice, Storage & Fuel Co.*, 138 Mo. App. 56.

Negligence—Prima facie case—Defense:—A *prima facie* case of negligence against a warehouseman is made upon plaintiff showing that he deposited goods in the warehouse in good condition, which, upon demand, the warehouseman failed or refused to deliver, or delivered in a damaged condition. Plaintiff having so shown, it devolved upon defendant to introduce evidence of ordinary care on its part and establish that although the loss occurred, it was through no breach of duty of its part. *Berger* v. *St. Louis Storage & Commission Co.*, 136 Mo. App. 36, 40.

Action by warehouseman for injury to goods while in his van —Pleading:—In a suit by a warehouseman against a street railway company for damage by collision with a street car to certain furniture being conveyed by plaintiff in one of its vans it was *held* that it was not error for plaintiff to omit to allege in its petition that the furniture was in its possession as a common carrier; that, as a bailee, plaintiff was entitled to recover the value of the furniture and further that defendant was not prejudiced by a failure to allege that plaintiff was in possession of the furniture as bailee. *American Storage & Moving Co.* v. *St. Louis Transit Co.*, 120 Mo. App. 410, 414.

O.

Measure of damages—Rule stated:—In an action against a warehouseman to recover for damage to cotton, held that the true measure of damages is the market value of the cotton on the day the demand of delivery is made, less the sum realized on a fair sale of the cotton, in its damaged condition, plus a reasonable expenditure in preparing it for market. *Prince & Co.* v. *St. Louis Compress Co.*, 112 Mo. App. 49, 66.

P.

Contract to insure goods—Warehouseman liable:—Where a warehouseman agreed with the owner of goods stored with him,

at the time of deposit, to have the same fully insured against fire, he is liable for the value thereof, in case of their destruction from this cause. *Dawson* v. *Waldheim,* 80 Mo. App. 52.

Loss by fire—Evidence as to location of warehouse—Pleading:—The defendant was sued, charged with liability as a warehouseman, for the destruction by fire of goods belonging to the plaintiff, stored in the defendant's warehouse. The petition alleged that the defendant failed and neglected to exercise reasonable care of said flour while so stored. It was not alleged that by reason of the proximity of the warehouse to a refining establishment, the warehouse was not a safe place in which to store the flour. On the above pleadings it was *held* that evidence tending to prove that the defendant owned the property upon which the refining works were situated, and that such works were of very inflammable nature, etc., was properly excluded. *Standard Milling Co.* v. *White Line C. T. Co.,* 122 Mo. 258.

Same—Insurance distributed pro rata:—A warehouseman, commission merchant and others having the custody of and being responsible for property of their principals or consignors may insure such property in their own names, and may in their own names recover not merely the amount of their commissions or charges on such property, but the full amount of the policy up to the value of such property. When the policy by apt language covers the property of all such principals or consignors, and the amount of the insurance is less than the value of the property, a court of equity will decree that all the principals and the warehouseman to the extent of the value of his own property, shall share pro rata in the proceeds of the insurance notwithstanding that certain of the principals had contracted with the agent warehouseman, etc., to insure their property to its full value. *Ferguson* v. *Pekin Plow Co.,* 141 Mo. 161.

Same—Insurance—Contract for indemnity:—Plaintiff, a railway company, leased to defendant's testator a certain part of its right of way, on which to erect a warehouse, upon condition that he should hold plaintiff harmless for all damages by fire or other causes, to the building and contents. Owners of property in the building destroyed by fire caused by plaintiff's engines recovered judgments against plaintiff, who sued upon the abovementioned provision in the lease. *Held:* That the contract was

one to indemnify plaintiff against loss for having to pay damages because of the negligence of its servants in running its trains, and that plaintiff was entitled to recover. *Wabash R. R. Co.* v. *Ordelheide*, 172 Mo. 436, approved in *Ordelheide* v. *Wabash R. R. Co.*, 175 Mo. 337.

Q.

Warehouse receipts—Issued by warehouseman against his own goods not a "warehouse receipt":—A receipt issued by the owner of goods, stored in his own store, is not a warehouse receipt. *Conrad* v. *Fisher*, 37 Mo. App. 352; *Valley National Bank* v. *Frank*, 12 Mo. App. 460; *Thorne* v. *First National Bank*, 37 Oh. St. 254; *Adams* v. *Merchants' National Bank*, 2 Fed. Rep. 174; *S. C.*, 9 Bliss. (U. S.) 396; *Yenni* v. *McNamee*, 45 N. Y. 614; *Farmers' Bank* v. *Lang*, 87 N. Y. 209.

Same—Negotiability—Payable to bearer—Not negotiable:—Warehouse receipts, made payable to bearer, not transferable by indorsement, are not negotiable as mercantile paper. There must be both a delivery and indorsement to confer upon a warehouse receipt the negotiability of mercantile paper. The transfer of cotton notes or receipts gives to transferee no greater right than he would have acquired by the delivery of the goods themselves. Warehouse receipts or cotton notes represent the cotton itself, and a pledge thereof is as effectual as a pledge of the cotton itself. *Erie & Pacific Dispatch* v. *Compress Co.*, 6 Mo. App 172; *Fourth National Bank* v. *St. Louis Cotton Comp. Co.*, 11 Mo. App. 333; *Shaw* v. *Railroad Co.*, 101 U. S. 557.

Same—Same—Transfer to assignee of holder not negotiation:—The owner of certain goods shipped the same to his agent, who sold part of the same and stored the portion sold in the warehouse of the defendant. The warehouseman issued a receipt therefor to the purchaser, which receipt, upon the insolvency of the purchaser, passed to his assignee. In an action brought by the owner for the recovery of the goods, it was *held* that the receipt, in the hands of the assignee, gave no claim to him as against the owner; that the owner would not be required to recover the receipt, but he could obtain possession of the property, and that the statute in relation to warehouse receipts was not intended for such a case as this. *James et al.* v. *Evans et al.*, 62 Mo. 375.

Same—Collateral security:—A valid pledge of property may be made by the delivery of the bill of sale, copy of gauger's return, and warehouse receipts, for these are symbols of the property itself. *Conrad* v. *Fisher,* 37 Mo. App. 352.

Same—Same—Transfers possession as against creditors:—Defendant stored certain grain with a warehouse company which leased a building of defendant and received a warehouse receipt therefor. He then borrowed money of the company and assigned the receipt as security. The property was attached by a creditor of the defendant, and the warehouse company filed an interpleader. *Held:* The property was not in the possession of the vendor but was actually in the possession of a third party as bailee. An order for the property on its sale, or on its being mortgaged, or pledged, on notice to the bailee, is all that is necessary to transfer possession as against creditors of the vendor. Judgment for interpleader affirmed. *Porter* v. *Shotwell,* 105 Mo. App. 177.

Same—Same—Pre-existing debt:—Plaintiff sold wheat to R., under circumstances which the court held required T. to pay cash on delivery. R's check was not honored and it was held title to the wheat did not pass to the buyer. Warehouse receipts had been issued and sent to R. who deposited them with defendant as collateral to secure his over drafts. *Held:* That the facts in the case showed that the consideration for the transfer of the warehouse receipt was a pre-existing debt; that at the time of the delivery of the receipts to defendant, the money had been paid on the overdrafts and the debt was then in existence; that one taking a negotiable instrument as collateral security for a pre-existing debt is not a bona-fide holder for value and is subject to the equities existing between the original parties. Judgment for plaintiff for value of the wheat affirmed. *Wright* v. *Mississippi Valley Trust Co.,* 129 S. W. 407.

Same—Attornment by warehouseman not necessary:—Attornment by a warehouseman is not required by the laws of Missouri in order to complete a symbolical delivery. In fact, the general rule in this country is that such attornment is not necessary; in Massachusetts it appears that the English doctrine of attornment has been followed. *Id.*

Same—What constitutes:—A negotiable warehouse receipt is one given for goods stored or deposited. It must contain an obligation to hold the property, represented thereby, in store. An instrument which is in effect an agreement to ship the goods is not such a receipt. *Union Savings Assn.* v. *St. Louis Grain Elevator Co.*, 81 Mo. 341; *Same* v. *Same*, 16 Mo. App. 560.

R.

Bill of lading—Transfer thereof:—The transfer of a bill of lading passes the title of the property represented thereby. The holder of such bill holds the legal title to the goods, and is entitled to all the rights of a *bona fide* purchaser for value, and when the consignor transfers the bill of lading for value, he loses his control over the goods, and has no right, therefore, to give directions to the carrier with regard to transportation. *White Live Stock Co.* v. *Chicago, Milwaukee & St. Paul R. R. Co.*, 87 Mo. App. 330; *Dymock* v. *Railroad*, 54 Mo. App. 400; *Bank* v. *Railroad*, 62 Mo. App. 531; *Obert* v. *Railroad*, 13 Mo. App. 81.

Same—Receipt and contract—Parol testimony:—A bill of lading partakes of the nature of a receipt, and of a contract. So much as partakes of the nature of a receipt may be explained or contradicted by parol testimony. *Steamboat Missouri* v. *Webb*, 9 Mo. 192.

Indictment—Theft from Warehouse:—The defendant was indicted for theft from a granary warehouse and building, the same being a building in which divers goods and various things were kept for sale and deposit. It was contended by the defendant that this description did not include a warehouse, the objection being that the word granary, before the word warehouse, was used as an adjective to qualify the following word. It was *held* that this contention could not be sustained. *State* v. *Watson*, 141 Mo. 338.

T.

Unlawful sale by warehouseman—Requisites of indictment:—Section 742, R. S. 1889, provides that it shall be unlawful for a warehouseman to sell or permit the removal of goods from his warehouse, without the assent of the holder of the receipt. Therefore, it was *held* that under this section, it must be affirmatively charged, in the indictment against the warehouseman, for the violation of its provisions, that he sold or removed the

stored property without the assent of the holder of the receipt therefor. *State* v. *Kirby*, 115 Mo. 440.

U.

Constitutionality of act relating to warehouse receipts under section 32, article 4, of the constitution of Missouri:—Section 32, article 4, of the constitution of the state of Missouri declares: "No law enacted by the general assembly shall relate to more than one subject, and that shall be expressed in the title." Defendant was indicted for selling and disposing of grain for which he had not paid, under the section of the act entitled, "An act to prevent the issue of false receipts or bills of lading and to punish fraudulent transfers of property by warehousemen, wharfingers, and others." It was contended, in behalf of the defendant, that as the section in said act provided that any person who shall purchase any goods or other commodity, for cash, and sell, hypothecate, or pledge the same to another, and use the proceeds thereof for any other purpose than the payment of the purchase price, with intent to cheat or defraud such vendor, shall be guilty of a felony, was unconstitutional and void for the reason that it was not germane to the subject of the act nor included in the title thereof.

The court *held* that an exact and strict compliance with the letter of the constitutional provisions is almost impracticable, and that the nature and object of this act was clearly within its title, for, by a fair construction thereof, it related to a class of defenses of a kindred character, all connected, blended, and germane. *State of Missouri* v. *Miller*, 45 Mo. 495.

Erection of warehouse on public ground permitted—Use a public one:—The city of St. Louis leased to the defendant part of its wharf for the purpose of the erection of a warehouse thereon. The lease could be terminated by the city upon six months' notice to the lessee. The warehouseman served the public by receiving grain from the boats on the Mississippi river. It was contended that the lease to the defendant was void on the ground that it was a use of public property for private purposes. The court *held* that this contention could not be sustained; that as a warehouseman could show no favoritism and was obliged to receive property for storage as long as he had room therefor, the property was clothed with and had attached to it a public trust;

further, that, like a railroad or steamboat, the property is private and is operated for private gain, but the use is public. *Belcher Sugar Refining Co.* v. *St. Louis Grain Elevator Co.,* 101 Mo. 192. Where the city had leased the property to the defendant unconditionally, it was there *held* that such lease was void. See *Belcher Sugar Refining Co.* v. *St. Louis Grain Elevator Co.,* 82 Mo. 121.

Charges for storing grain may be regulated by state:—Where an elevator company is engaged in the business of storing grain, and is doing business in all respects as a public warehouseman, it is engaged in a public trust, is subject to public regulations, and the state may prescribe regulations even as to the charges of storage. *Belcher Sugar Refining Co.* v. *St. Louis Grain Elevator Co.,* 101 Mo. 192; *Munn* v. *Illinois,* 69 Ill. 80, aff'd 94 U. S. 113. See also *State ex rel. Star Pub. Co.* v. *Associated Press,* 159 Mo. 410, in which the doctrine of *Munn* v. *Illinois* is severely criticised. See also *People* v. *Budd,* 117 N. Y. 1, aff'd 143 U. S. 517; *North Dakota ex rel. Stoeser* v. *Brass,* 2 N. D. 482, aff'd 153 U. S. 391. See note to *People* v. *Budd* in New York decisions, this volume, p. 676.

CHAPTER XXVI

MONTANA

LAWS PERTAINING TO WAREHOUSEMEN

Storage—Deposit for hire:—A deposit not gratuitous is called storage. The depositary in such case is called a depositary for hire. Rev. Codes, Mont., 1907, Sec. 5157.

Degree of care required for depositary for hire:—A depositary for hire must use at least ordinary care for the preservation of the thing deposited. *Id.* sec. 5158.

Rate of compensation for fraction of a week, etc.:—In the absence of a different agreement or usage, a depositary for hire is entitled to one week's hire for the sustenance and shelter of living animals during any fraction of a week, and to half a month's hire for the storage of any other property during any fraction of a half month. *Id.* sec. 5159.

Termination of deposit:—In the absence of an agreement as to the length of time during which a deposit is to continue, it may be terminated by the depositor at any time, and by the depositary upon a reasonable notice. *Id.* sec. 5160.

Same:—Notwithstanding an agreement respecting the length of time during which a deposit is to continue, it may be terminated by the depositor on paying all that would become due to the depositary in case of the deposit so continuing. *Id.* sec. 5161.

Sale to pay costs of storage:—Any storage or commission merchant receiving personal property from any person for storage and any common carrier of goods by whom any personal property is lawfully stored before or after the transportation thereof, may, after keeping the same in store for ninety days, in default of the payment of the storage or freight money on such personal property, advertise and sell the same at public auction, to the highest bidder, for cash, first giving notice of the time, the terms, and place of sale, and a description of the

property to be sold, by publication in some newspaper published in the county where the property may be stored. Said notice shall be published at least once a week for four weeks next previous to the day of sale, and shall specify the amount due on the property to be sold. When a specified time has been agreed upon between the parties for the storage of said property, the same shall not be advertised until the expiration of the time agreed upon. Should there be no newspaper published in the county where such property is stored, then notice may be given in the newspaper published nearest thereto, in some other county, in this State. But no more of such property shall be sold than is necessary to pay the charges due, together with the costs. *Id.* sec. 5162.

Application of proceeds of sale:—After paying the expenses of sale, including the publication of notice, the storage or commission merchant, or the carrier, shall be authorized, out of the proceeds arising from the sale of the property, to retain the amount due him for storage or freight money, or both, due upon any such property, and the excess, if any, must be paid over to the person entitled to the proceeds thereof. All sales under this Article shall vest the title to the property sold in the purchaser thereof. *Id.* sec. 5163.

Property upon which advances are due, may be sold when:—When any commission merchant or warehouseman receives on consignment, produce, merchandise or other property, and makes advances thereon, either to the owner, or for freight and charges, he may, if the same is not paid to him within ninety days from the date of such advances, cause the produce, merchandise or property, on which the advances were made, to be advertised and sold as provided herein. *Id.* sec. 2007.

Issuing fictitious bills of lading, etc.:—Every person being the master, owner, or agent of any vessel, or officer or agent of any railroad, express or transportation company, or otherwise being or representing any carrier, who delivers any bill of lading, receipt, or other voucher, by which it appears that any merchandise of any description has been shipped on board any vessel, or other carrier, unless the same has been so shipped or delivered, and is at the time actually under the control of such carrier, or the master, owner, or agent of such vessel, or of some officer or agent of such company, to be forwarded as expressed in such bill

of lading, receipt or voucher, is punishable by imprisonment in the state prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both. *Id.* sec. 8731.

Issuing fictitious warehouse receipts:—Every person carrying on the business of a warehouseman, wharfinger, or other depositary of property, who issues any receipt, bill of lading, or other voucher for any merchandise of any description, which has not been actually received upon the premises of such person, and is not under his actual control at the time of issuing such instrument, whether such instrument is issued to a person as being the owner of such merchandise, or as security for any indebtedness, is punishable by imprisonment in the state prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both. *Id.* sec. 8732.

Erroneous bills of lading or receipts issued in good faith:—No person can be convicted of any offense under the last two sections by reason that the contents of any barrel, box, cask, or other vessel or package mentioned in the bill of lading, receipt, or other voucher, did not correspond with the description given in such instrument of the merchandise received, if such description corresponded substantially with the marks, labels, or brands upon the outside of such vessel, or package, unless it appears that the accused knew such marks, labels, or brands were untrue. *Id.* sec. 8733.

Duplicate receipts must be marked "duplicate":—Every person mentioned in this chapter, who issues any second or duplicate receipt or voucher, of a kind specified therein, at a time while any former receipt or voucher for the merchandise specified in such second receipt is outstanding and uncancelled, without writing across the face of the same the word "duplicate" in a plain and legible manner, is punishable by imprisonment in the state prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both. *Id.* sec. 8734.

Selling, etc., property received for transportation or storage:—Every person mentioned in this chapter who sells, hypothecates or pledges any merchandise for which any bill of lading, receipt, or voucher has been issued by him, without the consent in writing thereto of the person holding such bill, receipt or voucher, is punishable by imprisonment in the state prison not

exceeding five years, or by a fine not exceeding one thousand dollars, or both. The provisions of this section do not apply where the property is demanded or sold under process of law. *Id.* sec. 8735.

Grain elevators; location of on railroad right of way—Written application and contents thereof—Upon paying compensation shall have absolute right to locate—In case parties do not agree to location or site—District court to determine as to quantity and location of land:—Any person, firm or corporation desirous of erecting and operating at or contiguous to any railway station or siding a warehouse or elevator for the purchase, sale, shipment or storage of grain (including flax seed) for the public for hire may make application in writing, containing a description of that portion of the right of way of said railroad on which such person, firm or corporation desires to erect a warehouse or elevator, and the size and capacity of the warehouse or elevator proposed to be erected and the time for which it is desired to maintain such warehouse or elevator, to the person, firm or corporation owning, leasing or operating the railroad at such station or siding for the right, privilege and easement of erecting and maintaining for the time stated in such application, and for reasonable compensation for such warehouses or elevator as aforesaid upon the right of way pertaining to such railway at such siding or station and within and between the outside switches of the yard of such railway station or siding and upon paying or securing in the manner hereinafter prescribed reasonable compensation for the right, privilege and easement aforesaid, shall absolutely and unconditionally be entitled to the same. Provided, however, that if the person, firm or corporation owning, leasing or operating the railroad is not willing that the portion of the right of way selected by the applicant should be appropriated for such purpose and the parties cannot agree as to the quantity and location of the land upon which such grain warehouse or grain elevator shall be erected the matter shall be determined by the district court in the same manner and by the same proceeding for determining the amount of compensation to be paid where the parties cannot agree as to the amount.

An Act providing a summary method for procuring the right to erect a grain ware-house or grain elevator on Railroad Rights

of Way. Approved March 1, 1913, Laws, Montana, 1913, Chap. 43, page 60, Sec. 1.

Application for site to state what additional matter—District Court has jurisdiction to determine amount of compensation—Court to be always open in session for purposes of this article—Railroad to notify applicant within 30 days of acceptance or rejection of application—Railroad failing to give notice:—The application provided in Section 1 of this act shall also state the amount the applicant deems reasonable compensation for the right, privilege and easement he desires to acquire, and said applicant shall tender and pay to such person, firm or corporation from whom such easement is sought, the sum stated in such application, and in case the amount so named and tendered is not accepted, and the parties cannot agree on the amount to be paid for such right, privilege and easement, the same shall be ascertained, assessed and determined by proceedings in the District Court of the county in which the station or siding at which the right, privilege and easement sought is situated, which court is hereby given full jurisdiction in the premises, and shall at all times be deemed open and in session for the purposes of this article. It shall be the duty of any person, firm or corporation to whom application is made for the right to erect and maintain an elevator or warehouse, under the provisions of this article to within thirty days after the receipt of such application notify said applicant in writing of the acceptance or rejection of the amount stated in said application to be reasonable compensation for the right, privilege and easement sought to be acquired, and in case such person, firm or corporation fails to notify the applicant within said thirty days, such person, firm or corporation shall be deemed to have accepted said amount and upon the payment or tender thereof said applicant shall be deemed to have acquired the right, privilege and easement applied for. *Id.* Sec. 2.

Proceedings in District court—Petition and contents—Time to be fixed within which issue to be joined—Service of notice, contents of notice—To expedite trial—Findings of court or jury—Defendant shall elect to accept or reject findings—Judgment to be for what—Right of party instituting proceedings—Payment of rental—Failure to pay forfeits right:—Proceedings in the District Court shall be instituted and carried

on as follows: The parties seeking the right, privilege and easement aforesaid shall present to and file with the district court a petition in writing and under oath, specifying and describing the right, privilege and easement sought, and the time for which the same is sought and the fact that the parties to the proceedings are unable to agree upon the amount of compensation therefor. A copy of the application for such privilege shall be attached to said petition, and thereupon it shall be at once the duty of the court by its order in writing to fix a time, not more than thirty days thereafter within which the said person, firm or corporation so owning, managing or controlling such railroad shall appear and join issue in said proceeding; such notice shall be served as a summons is served in civil actions, and shall be ample notice to the parties so served to appear and join in the proceedings, and shall be ample to give the court full jurisdiction over the party against whom the proceedings are instituted and the property involved in the proceeding. The manner of joining issue and the procedure at the trial shall be the same as that in any other civil action at law. The trial of such issue shall be expedited by the court as much as possible. At the trial the court or jury, as the case may be, shall find and assess the compensation both in the form of an annual rental and in the form of a gross sum for the right, privilege and easement sought, and immediately after the finding or verdict has been made, the party against whom the proceedings have been taken shall elect whether to receive the annual rental or the gross sum found, and in case such election is not made by said party, then the other party to the proceedings may make such election, and after election is made as aforesaid, judgment shall be rendered adjudging, among other things, that upon payment of the gross sum found, or the annual rental found, yearly in advance, as the case may be, the party instituting the proceedings shall be entitled to the right, privilege and easement of erecting and maintaining the elevator or warehouse asked for in the application and petition aforesaid, and for the time therein specified; and thereupon the party in whose favor said judgment is rendered shall be entitled to a writ of execution in proper form to immediately invest such party with the right, privilege and easement aforesaid. In case the annual rental is elected, the same shall be paid yearly in advance, and if not so paid

after thirty days' default, the right, privilege and easement aforesaid shall be absolutely forfeited. *Id.* Sec. 3.

Appeal may be taken when—Appeal shall not stay judgment if indemnity bond is given by plaintiff—Condition of bond—Costs—Who deemed the unsuccessful party—Appeal from judgment determining quantity and location of land:—Within thirty days after the entry of said judgment as hereinbefore provided, but not later, an appeal may be taken by either party to the Supreme Court; but such appeal shall not stay or hinder the use or enjoyment to the fullest extent of the right, privilege and easement asked for by the petition and conferred by the judgment, if the party instituting the proceedings shall make and file a bond with sureties, to be approved by the court in an amount double the gross sum or annual rental, conditioned to pay such sum or rental and to abide and satisfy any judgment the Supreme Court may render in the premises. Costs and disbursements, as in civil actions, in each court, shall be paid by the unsuccessful party. If the finding of the court or jury is for a less or the same amount as tendered by the petitioner before instituting the proceedings, then the petitioner shall be deemed the successful party. But if the amount found is larger than the sum tendered, then the petitioner shall be deemed the unsuccessful party. Either party may appeal from that part of the judgment determining the quantity and location of the land upon which such warehouse or elevator is to be erected, and in the event of such appeal the judgment shall be suspended pending the appeal. *Id.* Sec. 4.

Elevators and warehouses erected under provision of this act deemed public:—All elevators and warehouses erected and maintained under the provisions of this article, shall be deemed public elevators, and public warehouses, and shall be subject to legislative control. *Id.* Sec. 5.

When erection of warehouse or elevator to be commenced and completed—Failure to comply with this section:—Any person, firm or corporation availing themselves of the provisions of this act, shall, within sixty days after the amount to be paid for the easement acquired thereunder is finally determined, by agreement or by proceedings in court commence the erection of the warehouse or elevator mentioned in the application, and complete the same within ninety days thereafter, and in case of

failure to comply with the provisions of this section, such person or persons shall be deemed to have abandoned the right acquired, and the part or portion of the railroad right of way described in the application shall be subject to selection by other applicants who may desire to avail themselves of the provisions of this act. *Id.* Sec. 6.

Duty of railroads to connect warehouses and elevators by sidetracks—To permit connections with sidetracks—Railroad not required to construct or furnish sidetracks except upon its own lands—Cost of sidetracks and connections to be paid by whom—Elevators and warehouses to be constructed when—When sidetracks between stations shall be constructed:—Every railroad company or corporation organized under the laws of this state, or doing business therein, shall, upon application in writing provide reasonable sidetrack facilities and running connections between its main track and elevators and warehouses upon or contiguous to its right of way at stations; and every such railroad corporation shall permit connections to be made and maintained in a reasonable manner with its side tracks to and from any warehouse or elevator without reference to its size, cost or capacity, where grain is or may be stored; provided, that such railroad company shall not be required to construct or furnish any side tracks except upon its own land or right of way; provided, the reasonable cost of the construction of such side tracks and connections, except the cost of the rails and fastenings, shall be paid by the person or persons for whose benefit such side tracks are provided or connections made; provided, further, that such elevators and warehouses shall not be constructed within one hundred feet of any existing structure, and shall be at safe fire distance from the station buildings and so as not essentially to conflict with the safe and convenient operation of the road; and where stations are ten miles or more apart, the railroad company, when required so to do by the Board of Railroad Commissioners of the State of Montana shall construct and maintain a side track for the use of shippers between such stations. *Id.* Sec. 7.

State Grain Inspection Department created:—A Department of record for the inspection and weighing of grain is hereby established to be called "The State Grain Inspection Depart-

ment." Said Department shall have full charge of the inspection and weighing of grain at all public warehouses.

An Act relating to Grain Elevators, Grain Warehouses and Grain Inspection in the State of Montana and elsewhere, fixing fees to be collected as incidental to the main purpose of the Bill as aforesaid and appropriating money to carry forward said main purpose, to-wit the creation of a Grain Inspection Department in the State. Approved March 1, 1913, Laws Montana, 1913, Chap. 47, page 67, Sec. 1.

Chief Grain Inspector; appointment of—Term of office—May be removed by the governor at any time—Qualifications:—It shall be the duty of the Governor to appoint a suitable person, to be confirmed by the Senate, who shall be known as the Chief Grain Inspector for the State of Montana, whose term of service shall be designated by the Governor, not exceeding two years, and may be limited by the Governor in his discretion to parts of a year, and who may be removed by the Governor at any time, with or without cause. Said Chief Inspector shall not be interested in buying or selling grain, either on his own account, or for others, nor shall he be directly or indirectly interested in handling or storing grain as a public warehouseman, or on private account during his term of office. *Id.* Sec. 2.

Duties—Rules and regulations—Records of inspection and weighing—Complaints of fraud and oppression:—It shall be the duty of the Chief Inspector to have general supervision of the inspection and weighing of grain, as required by this act, or the laws of the State, to supervise the handling, inspecting, weighing and storage of grain; to establish necessary rules and regulations therefor, and for the management of the public warehouses of the State, subject to the approval of the Governor, as such rules and regulations may be necessary to enforce the provisions of this Act, or any laws of this State in regard to the same; to keep proper records of all the inspecting and weighing done into and out of warehouses licensed by law to do business in this state, for which purpose he shall have provided books, blanks and other materials needed in order to keep perfect and proper records. He shall investigate all complaints of fraud or oppression in the grain trade and correct the same, so far as may be in his power. *Id.* Sec. 3.

Oath and bond of office—Conditions of bond:—The Chief Inspector shall, before entering upon the duties of his office, take the constitutional oath of office. He shall execute a bond to the State of Montana in the penal sum of Ten Thousand Dollars, with sureties, to be approved in the same manner as bonds of other appointive State Officers, conditioned that he will pay all damages to any person or persons who may be injured by reason of his neglect, refusal or failure to comply with the law and the rules and regulations of this Act. *Id.* Sec. 4.

To recommend to Governor supervising inspectors—Duties of supervising inspectors—To recommend to Governor supervising weighmasters in cities, towns, etc.—Duty of weighmasters—Assistant inspectors and weighmasters—Other employees:—The Chief Inspector shall be authorized to recommend to the Governor a suitable person as supervising inspector in each city, town or place in the State where one or more public warehouses may be doing business under the law, whose duty it shall be to visit at reasonable times the elevators and railroad tracks, supervising all inspections, with a view to securing uniform inspection of grain. The Chief Inspector is also authorized to recommend to the Governor a suitable person as supervising weighmaster in each city, town or place in the State where one or more public warehouses may be doing business under the law, whose duty it shall be to visit at reasonable intervals the elevators and railroad tracks, supervising all weighmasters, inspecting scales, and the loading and unloading of grain, with a view to securing correct weights on all grain weighed by the Department. The Chief Inspector is also authorized to recommend to the Governor suitable and qualified persons as assistant inspectors, and assistant weighmasters, who shall not be interested in any public or private grain warehouse or in buying or selling of grain, either directly or indirectly, and also such other employees as may be necessary to properly conduct the business of his office; and the Governor is hereby authorized to make such appointments, if found by him to be necessary, and not otherwise. *Id.* Sec. 5.

Chief Inspector to have supervision of subordinate officers—Reports to Chief Inspector—Oath and bond:—All supervising inspectors, assistant inspectors, and assistant weighmasters shall be under the supervision of the Chief Inspector, to whom

they shall report in detail all the services performed by them at such times as may be required by the Chief Inspector; such assistants to take the same oath as the Chief Inspector, and each shall execute a bond in the sum of Two Thousand Dollars, with like conditions and to be approved in like manner as the bond of the Chief Inspector. *Id.* Sec. 6.

Standard samples of grains to be furnished on request:—It shall be the duty of the Chief Inspector to furnish any public elevator or warehouse in the State with standard samples of the different grades of grain as established by official inspection, when requested so to do, at the actual cost of such samples. *Id.* Sec. 7.

Inspection fees, weighing, re-inspection, etc.—Where scales are furnished for weighing in cars—Inspection and weighing of empty cars—Information to be mailed to consignor—Fees for weighing and inspecting when track scales are furnished—Where grain shall be weighed—Certificate of weight to be furnished shipper and duplicate to be attached to way bill—Prima facie evidence of weight—When fees may be fixed by chief grain inspector:—The fees collectable shall be as follows: For inspecting and sampling each carload of grain; for inspecting out of elevators; for weighing into warehouses, mills or elevators; for weighing out grain that has been previously weighed by the State, where certificates are required; for weighing out where no certificates are required; not to exceed one dollar per car load of grain in any instance; for re-inspecting where the former inspection and grade are sustained, not to exceed one dollar per car; and in all cases where extra samples of car lots of grain inspected are demanded, the charge per each sample shall be twenty-five cents. Provided, further, that whenever track scales are furnished by the elevator or warehouseman suitable for weighing all grain in car load lots, all grain delivered to such elevator or warehouse shall be weighed by the State Grain Inspection Department before the seal of the car in which it is loaded is broken; and thereupon such grain shall be tested, inspected and graded; and after the grain has been removed from such car, the car, shall, by the Department, be inspected, and again weighed. The name and postoffice address of the consignor of such car, when known to the Department, shall within ten hours after inspecting such grain, be mailed

or delivered to the consignor, with a statement of the gross weight of such carload of grain, the total net weight of such grain, the test weight per bushel, and the grade of such grain; and for each car so inspected and weighed on such track scales so provided by the elevator or warehouseman, the fee for weighing into the warehouse, mill or elevator, shall not exceed one dollar per car. It is further provided that all grain loaded for shipment shall be weighed at the first track scale enroute, where there is a deputy grain inspector, under the supervision of such grain inspector; the said grain inspector shall issue a certificate to the shipper, and shall attach a duplicate thereof to the way bill, which certificate, or the duplicate thereof, shall be prima facie evidence of the amount of grain loaded in the car, in all the Courts of this State; fees for such weighing and certificate shall not exceed one dollar per car. The fees collectible where not definitely fixed herein shall be fixed by the Chief Grain Inspector with the approval of the Governor and may be changed and adjusted from time to time as necessity requires. *Id.* Sec. 8.

Lien of inspection and weighing charges—Common carrier to collect, when:—The charge for inspection and weighing of grain shall be a lien on the grain so inspected and weighed, and whenever such grain is in transit, the said charges shall be treated as advanced charges and shall be collected and paid by the common carrier in whose possession the same is at the time of such inspection and weighing. *Id.* Sec. 9.

Monthly reports of Chief Inspector—Fees to be paid into state treasury:—The Chief Inspector of Grain shall, on or before the 10th day of each month, file with the State Auditor a full and detailed report under oath, of the work done by his department for the preceding month, setting forth the number of cars of grain inspected and weighed, and by whom, the number of samples furnished, the amount of revenue collected by himself and assistant inspectors and weighmasters; and the Chief Inspector shall, at the time of filing such report, pay into the State Treasury all moneys received as fees by his department, which shall be credited to the general fund. *Id.* Sec. 10.

Office of Chief Inspector at the Capitol—Salary and expenses—Salaries of supervising and assistant inspectors and weighmasters—Secretary and salary:—The Chief Inspector shall keep his office at the Capitol building in the City of

Helena, and shall receive a monthly salary of one hundred and fifty dollars, and shall be allowed all actual and necessary traveling expenses paid in cash while attending to his official duties; all supervising inspectors, supervising weighmasters, assistant inspectors and assistant weighmasters shall receive a monthly salary of one hundred dollars per month while actually employed, and the Governor may appoint a Secretary of the Department of Grain Inspection, if he deems it necessary, who shall receive a salary of one hundred dollars per month, and be removable at the pleasure of the Governor. *Id.* Sec. 11.

Misdemeanors—Penalty:—Any Chief Inspector, inspector or weighmaster who shall be guilty of neglect of duty, or who shall knowingly or carelessly inspect, grade or weigh any grain improperly, or who shall accept any money or other valuable thing or consideration, directly or indirectly, for any neglect of duty, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in a sum not exceeding five hundred dollars, or imprisoned for not more than six months in the county jail, or shall suffer both such fine and imprisonment. *Id.* Sec. 12.

Official inspection and weighing to be done only by whom —Misdemeanor:—The official inspection or weighing of grain in this State whether into or out of public warehouses or elevators, or in cars, barges, wagons or sacks, arriving at or shipped from points where State Grain Inspection is established, must be performed by such persons as may be duly appointed and qualified according to law, and any person who shall act as official inspector or weigher of grain who has not been first duly appointed and qualified, shall be guilty of misdemeanor. *Id.* Sec. 13.

To bribe or offer to bribe an officer a felony:—Any person who shall bribe or offer to bribe any of the officers created under this act shall be deemed guilty of a felony, and shall be punished as provided in Section 8198 Revised Codes. *Id.* Sec. 14.

Re-inspection may be called for or an appeal taken, when—Standing appeal committees decision—Fees of committee to be paid in advance—On successful appeal fees to be returned:—In case any owner, consignee, or shipper of grain or any warehouse manager, shall be aggrieved by the decision of any inspector or weighmaster, a re-inspection may be called

for, or an appeal may be taken to a standing committee of three, which the Chief Inspector shall appoint at every place where State Inspection shall be established. Said Committee shall consist of experienced grain men, and their decision shall be final; Provided that the party appealing shall pay said Committee the sum of two dollars each, per case appealed, before said appeal shall be entertained; and in case said appeal is not sustained, the said six dollars so deposited shall be full compensation for such arbitration. If the appeal is sustained, the appellant shall receive six dollars from the State Treasurey, upon an order issued by the State Auditor, upon a voucher in writing by the Chief Inspector. *Id.* Sec. 15.

Grain may be sold by sample regardless of grade—Act not to change liability of warehouseman:—Nothing in this Act shall be construed so as to prevent any person from selling grain by sample, regardless of grade; and the provisions of this Act shall not change the liabilities of the warehouseman on grain now in store, nor the inspection thereof, but said inspection shall be had under the same system, or lack of system, under which it was received into store. *Id.* Sec. 16.

Attorney General ex-officio attorney for state grain inspector—Criminal prosecutions:—The Attorney General shall be Ex-Officio Attorney for the State Grain Inspection Department, and shall give all necessary advice to that department. All criminal prosecutions shall be prosecuted in the name of the State of Montana by the proper county attorney. *Id.* Sec. 17.

Public warehouses defined—Public warehousemen defined:—All elevators and warehouses located in the State in which grain is stored in bulk, and in which the grain of different owners is mixed together, or in which grain is stored in such manner that the identity of the different lots or parcels cannot be accurately preserved, and doing business for a compensation, are hereby declared public warehouses, and the person, firms, associations, or corporations operating or owning the same, or any other person or persons who buy or sell grain in carload lots for shipment are public warehousemen. *Id.* Sec. 18.

Public warehouses and warehousemen required to procure licenses—Application for license—License revocable when and how:—The proprietor, lessee, or manager of any public

warehouse, and every public warehouseman, shall be required within sixty days after the passage of this Act, to procure from the Chief Inspector a license to transact business as a public warehouseman, and shall make written application therefor, setting forth therein the name of such warehouse or designation of where he is doing business, and the individual name and postoffice addresses of each person interested as owner or principal in the ownership and management of the same; or if owned or managed by a corporation the names and postoffice addresses of the President and Secretary, and said license shall give authority to carry on and conduct the business of a public warehouse in accordance with the laws of the State, and shall be revocable by the Chief Inspector, after approval of his decision by the Attorney General, upon complaint being made in writing, setting forth the particular violation of the law, and upon due notice and hearing and sufficient proof. *Id.* Sec. 19.

Bond of public warehouse—Conditions of—Filing fee for bond:—Before receiving a license, every person, company or corporation applying for the same shall file with the Secretary of State a bond to the State of Montana, for the benefit of all persons interested, with sureties to be approved by the Chief Inspector, in the penal sum of not less than ten thousand dollars nor more than one hundred thousand dollars, in the discretion of the Chief Inspector, conditioned upon the faithful performance of all duties as a public warehouseman and full compliance with all the laws of Montana, enacted or to be enacted in relation thereto. A fee of one dollar shall be paid to the Secretary of State for filing such bond. Provided, that when any person, company or corporation procures a license for more than one warehouse in the State, but one bond shall be required. *Id.* Sec. 20.

Misdemeanor to transact business of public warehouseman without a license and giving bond:—Any person who shall transact the business of a public warehouseman, without first procuring a license and filing such bond as hereinbefore provided, or who shall continue to transact any such business after such license has been revoked (save only that he shall be permitted to deliver property previously stored in such warehouse) shall be deemed guilty of a misdemeanor. *Id.* Sec. 21.

Duty to receive grain in usual course of business without discrimination—Grain shall be inspected, weighed and graded by duly authorized inspector and weigher—Not to be construed to require receipt of any kind of grain when there is not proper storage room or warehouse is necessarily closed—Charles for inspection and weighing to be paid by warehouseman:—It shall be the duty of every public warehouseman whenever inspection and weighing is or shall be established, to receive for storage any grain, dry and suitable for warehousing, that may be tendered to him in the usual manner in which warehouses are accustomed to receive the same in the ordinary and usual course of business, not making any discrimination in the persons desiring to avail themselves of warehouse facilities; such grain to be in all cases inspected, weighed and graded by a duly authorized inspector and weigher (but to be stored with grain of a similar grade), and all grain delivered from such warehouse shall be inspected and weighed on its delivery by a duly authorized inspector and weigher of grain, if one has been appointed at said place. Nothing in this section shall be construed to require the receipt of any kind of grain into a warehouse in which there is not sufficient room to accommodate it or store it properly, or in cases where such warehouse is necessarily closed. The charge for inspection and weighing upon receipt and delivery shall be paid by the warehouseman and may be added to the charge of the storage. The Chief Inspector may recover such charges of the warehouseman by an appropriate action in his own name. *Id.* Sec. 22.

Warehouse receipts to be issued when—Warehouse receipts; statement and contents of:—Upon the application of the owner or consignee of grain stored in any public warehouse, the same being accompanied by evidence that all transportation and other charges which might be a lien upon the grain, including the charge for freight, inspection and weighing, having been paid, the warehouseman shall issue to the person entitled to receive it, warehouse receipt therefor, subject to the order of the owner or consignee of it, which receipt shall bear date corresponding with the date of receipt of the grain for storage, and shall state upon its face the quality and respective grade of grain, and that the grain mentioned in it has been received in store, to be stored with grain of the same grade by inspection, and that the grain

mentioned therein is deliverable upon the return of the receipt properly endorsed by the person to whose order it was issued, and the payment of the proper charges for storing and handling. *Id.* Sec. 23.

Warehouse receipts to be consecutively numbered—Lost or destroyed receipts—Numbers of car to be stated on receipts:— All warehouse receipts for grain issued by the same warehouse shall be consecutively numbered, and no two receipts bearing the same number shall be issued from the same warehouse during any one year, except in the case of a lost or destroyed receipt, in which case the new receipt shall bear the same date and number as the original and shall be plainly marked on its face "duplicate." If the grain was received from railroad cars, the number of each car shall be stated on the receipt, with the amount that it contained, if from barges or other vessels, the name of such craft; if from team or other means, the manner of its receipt shall be stated on its face. *Id.* Sec. 24.

When receipts to be marked "Cancelled,"—Receipts shall not be delivered until when—Regulating issueing of receipts—Partial delivery of grain stored—New receipts—Cancellation—Consolidating and dividing receipts—Statement in Substituted receipts:— Upon the delivery of grain from store, upon receipt, such receipt shall be plainly marked "Cancelled" upon its face, with the name of the person cancelling the same, and thereafter be void, and shall not again be put in circulation, nor shall grain be delivered twice upon the same receipt. No warehouse receipt shall be delivered except upon an actual delivery of grain into store into the the warehouse from which it purports to be issued, and which is to be represented by the receipt. Nor shall any receipt be issued for a greater quantity of grain than was contained in the lot so received, nor shall more than one receipt be issued for the same lot of grain, except in cases where a receipt for a part of a lot is requested, and then the aggregate receipt for a particular lot shall cover that lot and no more. In cases where a part of the grain represented by the receipt is delivered out of the store and the remainder is left, a new receipt may be issued for such remainder, but the new receipt shall bear the same date as the original, and shall state on its face that it is balance of receipt of the original number; and the receipt upon which a part has been delivered shall be

cancelled in the same manner as if all had been delivered. In case it is desired to divide one receipt into two or more, or to consolidate two or more receipts into one, and the warehouseman consents thereto, the original receipt or receipts shall be cancelled the same as if the grain had been delivered from the store, and the new receipt or receipts shall express on their face that they are a part of another receipt, or consolidation of other receipts, as the case may be, and the number of the original receipt shall appear on the new ones issued as explanatory of the change; but no consolidation of receipts differing more than ten days in date shall be permitted. All new receipts issued for old ones cancelled shall bear the same date as those originally issued. *Id.* Sec. 25.

Legal responsibility not to be altered by statement on receipts:—No warehouseman shall insert in any receipt any language limiting or modifying his liabilities or responsibilities as imposed by law. *Id.* Sec. 26.

Grains to be delivered upon surrender of receipt when and where—Liability of non-complying warehouseman—Proviso:—On the return of any warehouse receipt properly endorsed, and the tender of all proper charges upon the property represented by it, such property shall be immediately delivered to the holder of such receipt, either at the elevator where originally stored or at a terminal point designated by the owner or consignee, and shall not be subject to any further charges for storage, after demand for such delivery has been made; and the property represented by such receipt shall be delivered within forty-eight hours after such demand shall have been made, and the cars or vessels for transportation shall have been furnished. The warehouseman on default shall be liable to the owner of such receipt for damages occasioned by such default; Provided, no warehouseman shall be held to be in default if the property is delivered in the order demanded, and as rapidly as due diligence, care and prudence will justify; but no grain shall be delivered from store or warehouse until the receipt for the same has been actually returned. *Id.* Sec. 27.

Statements by warehousemen, owners, etc., on demand of chief grain inspector:—It shall be the duty of every owner, lessee, and manager of every public warehouse and of every public warehouseman in this State to furnish in writing, under

oath, at such times as the Chief Inspector shall require a statement concerning the condition and management of the business of such public warehouse or warehouseman . *Id.* Sec. 28.

Records to be kept by warehouseman—Record of warehouse receipts issued and cancelled:—The manager of every public warehouse where inspection and weighing are, or shall be established, shall keep a record of the amount of each kind and grade of grain received in store at such warehouse for which receipts have been issued and what warehouse receipts upon which the grain has been delivered have been cancelled, giving the number of each receipt, and the amount, kind and grade of grain received and shipped upon each; also how much grains, if any, was delivered and shipped, and the kind, for which warehouse receipts have not been issued, the aggregate of such reported cancellation and delivery of unreceipted grain corresponding in amount, kind and grade with the amount so reported delivered and shipped. He shall also keep a record of what receipts have been cancelled, and new ones issued in their stead, and shall furnish the Chief Inspector, on demand, any information regarding the recipts issued or cancelled that may be necessary for him to keep such official records as he may deem advisable. *Id.* Sec. 29.

Examination of property stored by owners, etc., and facilities to be furnished—Scales to be subject to examination and test—Payment of fees for scale tests—Use of defective scales:—All persons owning property or who may be interested in the same, in any public warehouse, and all duly authorized inspectors of such property shall at all times during ordinary business hours, be at liberty to examine any and all property stored in any public warehouse, and all proper facilities shall be extended to such person by the warehouseman, his agents and servants for an examination. All scales used for weighing shall be subject to examination and test by any duly authorized inspector, weighmaster or sealer of weights and measures, at any time when required by any person or persons, agent or agents, whose property has been, or is to be weighed on such scales, and the fee for such test shall be paid by the parties making such demand, if the scales are fuond correct, and by the warehouse proprietor if found incorrect. Any warehouse continuing to use scales found to be in an imperfect or incor-

rect condition by such examination and test, until the same shall have been pronounced correct and properly sealed, shall be guilty of a misdemeanor. *Id.* Sec. 30.

Before warehouse receipt issues owner may withdraw grain when—Duty of railroad in placing cars for dissatisfied shipper —Liability of warehousemen for storing grain after notice of withdrawal:—In case any owner or consignee of grain for which a warehouse receipt has not been delivered shall be dissatisfied with the inspection or grade of any lot of grain, or shall, from any cause, desire to receive his property without its passing into store, he shall be at liberty to have the same withheld from going into public warehouse (whether the property may have been previously consigned to such warehouse or not) by giving notive to the person or corporation in possession thereof, and such grain may be withheld from going into store and be delivered to him, subject only to such proper charges as may be a lien upon it prior to such notice; the grain in railroad cars to be removed therefrom by such owner or consignee within twenty-four hours after such notice has been given to the railroad company having it in possession. Provided, such railroad company place the same in a proper and convenient place for unloading; and any person or corporation refusing to allow such owner or consignee to receive his grain shall be guilty of conversion and shall be liable to pay such owner or consignee double the value of the property so converted. Notice that such grain is not to be delivered into store may also be given to the proprietor or manager of any public warehouse into which it would otherwise have been delivered, and if after such notice it be taken into store in such warehouse, the owner or manager thereof shall be liable to the owner of such grain for double its value. *Id.* Sec. 31.

Agreement between railroad and warehousemen contrary to directions of shipper:—It shall be unlawful for any owner, lessee, or manager of any public warehouse or any public warehouseman to enter into any contract, agreement, understanding or combination with any railroad company, or other corporation, or any individual or individuals, by which the property of any person is to be delivered to any public warehouse for storage or for any purpose contrary to the directions of the owner, his

agent or consignee, and such unlawful act is hereby declared to be a misdemeanor. *Id.* Sec. 32.

Table and schedule of rates to be published annually by warehouseman—Charges for storage fixed—Cleaning charges fixed:—The owner, operator or manager of every public warehouse shall be required, during the first week of July of each year, to publish in one or more of the newspapers (daily newspaper if there is such) published in the city or village or in the newspaper published at the county seat of the county in which such warehouse is situated, a table or schedule of rates for the storage of grain in his warehouse during the ensuing year, which rates shall not be increased during such year. The charges for storage and handling of grain, except flax, including the cost of receiving, elevating, insuring and delivery, shall be, for the first fifteen days, or part thereof two cents per bushel; and for each fifteen days or part thereof; after the first fifteen days, one-half cent per bushel; and for continuous sotrage between the fifteenth day of November and the fifteenth day of May following, not more than four cents per bushel. The charge for cleaning, when cleaned at request of owner, shall be one-cent per bushel. The rates for receiving, elevating, insuring and delivering and fiftten days storage of flax shall be four cents per bushel, and for cleaning flax two cents per bushel. *Id.* Sec. 33.

Warehouseman insures against fire—When responsible for heating of grain—Order in which grain is to be disposed or shipped by warehouseman. Grain out of condition—Equal quality to be delivered—Notice of grain out of condition—Contents of notice—Duty to care for grain described in notice—Responsibility for negligence—Shall deliver only to owner—When grain out of condition may be sold:—Public warehouseman shall be held responsible for any loss or damage to property by fire while in their custody; but no warehouseman shall be liable for damage to grain by heating unless such heating was caused by a want of ordinary care on his part. In order that no injustice may result to any person, it shall be the duty of such warehouseman to dispose of, by delivery or shipping in the ordinary and usual manner of so delivering, that grain of any particular grade which was first received by him, or which has been for the longest time in store in his warehouse; and un-

less the public notice hereinafter provided has been given, that some portion of the grain in his warehouse is out of condition, or is becoming so, such warehouseman shall deliver grain of quality equal to that delivered to him, on all receipts as presented. In case, however, any warehouseman shall discover that any portion of the grain in his warehouse is out of condition, or becoming so, and it is not in his power to preserve the same, he shall immediately give notice to the owner, if known, and if not known, by public notice by advertising in a newspaper in or nearest to the place where his warehouse is situated, and by posting a notice in the most public place, for that purpose, in said city, town or village, of its actual condition, as near as he can ascertain. He shall state in such notice the kind and grade of grain and the bin in which it is stored, and shall also state the receipts outstanding upon which such grain will be delivered, giving the number, amount and date of each, which receipts shall be those of the oldest dates and numbers then in circulation or uncancelled, the grain represented but which has not been previously declared or receipted for as out of condition; or if the grain longest in store has not been receipted for, he shall so state, and shall give the name of the party for whom such grain was stored, the date it was received, and the amount of it; and the enumeration of receipts and the identification of grain so discredited shall embrace as near as may be as great a quantity of grain as is contained in such bins; and such grain shall be delivered upon return and cancellation of such receipts, and the unreceipted grain upon the request of the owner or person in charge thereof. Nothing herein contained shall be held to relieve the said warehouseman from exercising proper care in preserving such grain after such publication of its condition; but such grain shall be kept separate and apart from all direct contact with other grain, and shall not be mixed with other grain while in store in such warehouse. Any warehouseman guilty of any act or neglect, the effect of which is to depreciate property in his warehouse shall be held responsible therefor to the person damaged thereby, and the bond of such warehouseman shall be held for all damages so occasioned. Nothing in this Section shall be construed so as to permit any warehouseman to deliver any grain stored in a special bin, or by itself, to any but the owners of the lot whether the same be represented by a warehouse receipt, or otherwise. In case the grain declared out of condition, as herein provided, shall not be

removed from store by the owner thereof within thirty days from the date of publication of the notice of its being out of condition it shall be lawful for the warehouseman to sell the same at public auction for account of the owner by giving ten days' public notice by advertisement in a newspaper (a daily newspaper if there is such) published in the city or town where such warehouse is located. *Id.* Sec. 34.

Grain grading commissioners—Duties—Establishing grades—Publication of notice of meeting—Publication of grades—Compensation and expenses:—It shall be the duty of the Governor to appoint three suitable persons to be known as the "Grain Grading Commission" who shall, each year on a date to be annually fixed by the Chief Grain Inspector, establish a grade for all kinds of grain brought or handled in this State, which shall be known as "Montana Grades." The Grain Grading Commission shall elect one of its members clerk whose duty it shall be to record its work and keep its books. The Grain Grading Commission shall publish a notice in at least two newspapers in the state, one of which, if possible, shall be an agricultural or milling or grain trade journal, for three consecutive insertions, of their intentions to meet for the purpose indicated in this Act, so that interested parties may be present if desired; and the grades so established shall be published in three newspapers in the State, two of which shall be agricultural, and one grain trade, if possible, for three consecutive insertions. The compensation of such commissioners shall be one hundred dollars per annum and actual expenses to and from their place of meeting, and while in session. No commissioner shall receive or ride upon a railroad pass. The term of office of the commissioners shall be two years. *Id.* Sec. 35.

Statement of weights to owners and shippers:—Any shipper of grain which has been weighed by the grain inspection department shall on request in writing to the Chief Inspector, enclosing a stamp for reply, receive a statement of the weight of such grain, free of charge. Provided, that such written request shall state the number and initials of the car or cars, the weights of which are so desired. *Id.* Sec. 36.

Number of inspectors who may be appointed for terminal and shipping points outside of the state—Compensation and term—Not state officers—Rules and regulations:—The Gov-

ernor is hereby given authority to appoint any number of inspectors, not exceeding three, which, in his judgment may be necessary, to be and remain at such terminals and receiving points outside of the State, as may be necessary to protect the interest of the grain raisers and shippers of the State. These inspectors shall receive one hundred and twenty-five dollars per month for their service, and shall be appointed for a limited number of months in each year in the discretion of the Governor, who may remove them at pleasure. They are not state officers, but merely employees of the state, and need not be residents of Montana, unless the Governor shall so elect. The Governor shall formulate rules and regulations for their guidance, so as to protect the grain interests of the state. *Id.* Sec. 37.

When delivery to a warehouse is a bailment:—Whenever any grain shall be delivered at a warehouse and the receipt issued therefor provides for the delivery of a like amount and grade to the owner or holder in return, such delivery shall be considered in law a bailment, and not a sale. *Id.* Sec. 38.

Governor to fix grain inspection places:—The Governor shall by proclamation establish points in this State where grain inspection shall take place, as many as he deems necessary. *Id.* Sec. 39.

Appropriation:—For the purpose of carrying out the provisions of this Act the sum of five thousand dollars, or such part thereof as may be necessary, is hereby appropriated out of any moneys in the state treasury not otherwise appropriated. *Id.* Sec. 40.

DECISIONS AFFECTING WAREHOUSEMEN

B.

Directors liable for negligence:—The defendant corporation, within the corporate limits of a town, stored in its building an amount of Hercules powder in excess of that allowed by law. Plaintiff's intestate was killed by an explosion of the powder caused by fire in the building. In an action for damages against the corporation and five persons constituting its board of trustees it was *held* that directors owe a common law duty to third persons which if they violate they are responsible, whether that violation is the result of wrongful omission or commission and

that the question as to the personal liability of the officers of the corporation was whether or not they had exercised reasonable diligence in the control and supervision in their management of the corporation's business, or whether they were negligent in doing or not doing so under the circumstances. *Cameron* v. *K. C. Commercial Co.*, 22 Mont. 312.

R.

Bill of lading—Transfer of—Statute of frauds:—The transmission of a bill of lading amounts to the actual delivery of the possession of the property described in it, and is a compliance with the statute of frauds as to the sale and delivery of property. *First Nat. Bank* v. *McAndrews et al.*, 5 Mont. 325; *Wetzel et al.* v. *Power et al.*, 5 Mont. 214; *Walsh* v. *Blakeley*, 6 Mont. 194.

CHAPTER XXVII

NEBRASKA

The Uniform Warehouse Receipts Act is in force in Nebraska. It took effect July 2, 1909. See Laws 1909, Ch. 152, p. 536, Compiled Statutes of Nebraska, 1911, Secs. 6303 et seq. Also this volume, p. 1.

Sec. 60 (Sec. 6362) is as follows: "All of chapter 92 of the Compiled Statutes of Nebraska for the year 1907 and all acts and parts of acts inconsistent with this act are hereby repealed." In view of this repealing section and because of the abolition of the Board of Transportation the statutes pertaining to the duties of that board and Public Warehousemen are inoperative.

On April 11, 1913 the following Cold Storage Law was approved. Sess. Laws, Neb. 1913, Ch. 90, p. 234:

Sec. 1. *Definitions:* The term "cold storage" as used in this act shall be construed to mean a place artificially cooled to a temperature of 40 degrees F., or below, but shall not include such a place in a private home, nor any place having a refrigerating space of less than 100 feet.

The term "cold storage" as used in this act shall be construed to mean the keeping of "articles of Food" in "cold storage" for a period exceeding sixty days.

The term "articles of food" as used in this act shall be construed to mean and include all articles used for food, drink, confection, or condiment by man or other animal, whether simple, mixed or compound.

Sec. 2. *Cold Storage Warehouse, license:* Any person, firm or corporation desiring to operate a cold storage or refrigerating warehouse, shall make application in writing to the Food, Drug and Dairy Commission for that purpose, stating the location of its plant or plants. On receipt of the application the Food, Drug and Dairy Commission shall cause an examination to be made into the sanitary condition of said plant or plants and if found

to be in a sanitary condition and otherwise properly equipped for the business of cold storage, the Food, Drug and Dairy Commissioner shall cause a license to be issued authorizing the applicant to operate a cold storage or refrigerating warehouse for and during the period of one year: Provided, all licenses shall expire on the 31st day of December of the year in which they are issued. The license shall be issued upon payment by the applicant of a license fee of five dollars to the treasurer of the state.

Sec. 3. *Unsanitary places prohibited, inspection:* In the event that any place or places, or any part thereof, covered by a license, under the provision of this act, shall at any time be deemed by the Food, Drug and Dairy Commissioner to be in an unsanitary condition, it shall be the duty of the Food, Drug and Dairy Commissioner to notify licensee of such condition and upon the failure of the licensee to put such specified place or places, or the specified part thereof, in a sanitary condition within a designated time it shall be the duty of the Food, Drug and Dairy Commissioner to prohibit the use under its license such specified place or places, or part thereof, as it deems in an unsanitary condition until such time as it may be put in a sanitary condition.

Sec. 4. *Records, reports:* It shall be the duty of any person, firm or corporation licensed to operate a cold storage or refrigeration warehouse to keep an accurate record of the receipts and the withdrawals of the articles of food, and every such food stuffs that may have been previously held in storage an accurate record of the length of time of such storage shall be made and preserved and the Food, Drug and Dairy Commissioner shall have free access to these records at any time. Every such person, firm or corporation shall, furthermore, submit a quarterly report to the Food, Drug and Dairy Commissioner, setting forth in itemized particulars the quantity of food products held in cold storage. Such quarterly reports shall be filed on or before the 6th day of January, April, July and October of each year, and the reports so rendered shall show the conditions existing on the first day of the month in which the report is filed. The Food, Drug and Dairy Com-

missioner shall have the authority to require such reports to be made at more frequent intervals than the times herein specified, if in the judgment of the Food, Drug and Dairy Commissioner more frequent reports shall be needed in the interest of a proper enforcement of this act, or for other reasons affecting the public welfare. The reports herein required shall be verified and sworn to by some managing officer or agent of the cold storage plant or refrigerating warehouse.

Sec. 5. *Food, unsanitary, not for humans:* No article of food intended for human consumption shall be placed in cold storage if deceased or tainted or deteriorated so as to injure its keeping qualities, or if not slaughtered, handled and prepared for storage in accordance with the pure food and sanitary food laws and such rules and regulations as may be prescribed by the Food, Drug and Dairy Commission for the sanitary preparation of food products for cold storage, under the authority hereinafter conferred. Any article of food if intended for use other than human consumption before being cold stored shall be marked by the owner in accordance with forms prescribed by the Food, Drug and Dairy Commission (under authority hereinafter conferred) in such a way as to plainly indicate the fact that such articles are not to be sold for human food.

Sec. 6. *Inspection:* It shall be the duty of the Food, Drug and Dairy Commissioner to inspect and supervise all cold storage or refrigerating warehouses in this state, and to make such inspection of the entry of articles of food therein as the Food, Drug and Dairy Commissioner may deem necessary to secure proper enforcement of this act. The Food, Drug and Dairy Commissioner his deputy, inspectors or employees, shall be permitted access to such establishments and all parts thereof at all reasonable times for purposes of inspection and enforcement of the provisions of this act. The said Food, Drug and Dairy Commissioner may also appoint and designate such person or persons as he deems qualified to make the inspections therein required.

Sec. 7. *Containers, marking, recording:* All food, when deposited in any cold storage or refrigerating warehouse, shall be properly and securely packed in suitable containers and each

container shall at the time of deposit be plainly, legibly and indelibly marked with a correct distinctive serial lot number of such deposit. Said marking to be done under the direction of the operator of the storage so as to readily and certainly identify each item of deposit. Such serial number shall refer to proper records kept by said person, firm or corporation licensed to operate said cold storage or refrigerating warehouse, and it shall be the duty of every such person, firm or corporation operating said cold storage or refrigerating warehouse to keep an accurate and full record of said serial lot number of such deposit, together with a complete record showing from whom said articles in storage were received, the number and kind of packages and kind of food, and the place in said cold storage or refrigerating warehouse where said goods are deposited, and shall keep an accurate and full record of the date of the receipts and withdrawals of such deposits and shall not remove said deposit from the place designated in said records without making a record thereof. When such food is withdrawn from such storage or refrigerating warehouse, each container thereof shall then in like manner be marked with the true dates of entry and withdrawal. Such markings shall be done under the direction of the operator of the cold storage or refrigerating warehouse so as to readily and certainly identify each article so deposited. Provided, however, that where the owner of foods or operator of the cold storage or refrigerating warehouse shall desire to withdraw such goods for consignment and consumption without this state, such operator may deliver such goods to a carrier for shipment without the state without marking thereon the dates of entry and withdrawal as herein required, but said operator shall keep an accurate record of all such withdrawals that are not so marked and make a full and complete report thereof to the Food, Drug and Dairy Commissioner.

Sec. 8. *Length of storage:* No person, firm or corporation as owners or having control shall keep in cold storage any article of food for a longer period than twelve calendar months, except with the consent of the Food, Drug and Dairy Commissioner as hereinafter provided. The Food, Drug and Dairy Commissioner may, upon application, grant permission to extend the period of storage beyond twelve months for a particular con-

signment of foods, if the foods in question are found, upon examination, to be in proper condition for further storage at the end of twelve months. The length of time for which further storage is allowed shall be specified in the order granting the permission. A report on each case in which such extension of storage may be permitted, including information relating to the reason for the action of the Food, Drug and Dairy Commissioner, the kind and the amount of goods for which the storage period was extended, and the length of time for which the continuance was granted, shall be included in the annual report of the Food, Drug and Dairy Commissioner.

Sec. 9. *Notice to purchasers:* It shall be unlawful to sell, or to offer or expose for sale articles of food which have been held in cold storage without notifying persons purchasing or intending to purchase, the same that they have been so kept and it shall be unlawful to represent or advertise as fresh goods articles of food which have been held in cold storage.

Sec. 10. *Returning released goods:* It shall be unlawful to return to cold storage any article of food that has once been released from such storage and placed on the market for sale to consumers, but nothing in this section shall be construed to prevent the transfer of foods from one cold storage or refrigerating warehouse to another: Provided, such transfer is not made for the purpose of evading any provision of this act.

Sec. 11. *Food Commission, rules, regulations:* The Food, Drug and Dairy Commissioner may make rules and regulations to secure a proper enforcement of the provisions of this act, including rules and regulations with respect to the sanitary preparation of articles of food for cold storage, the use of marks, tags, or labels, and the display of signs, and the violation of such rules shall be punished on conviction, as provided in section 13 of this act.

Sec. 12. *Inspections, fees:* The Food, Drug and Dairy Commissioner shall make at least four inspections of each cold storage and warehouse covered by this act for which said inspections the operators thereof shall pay an annual inspection fee to the said commissioner of $10.00 for each cold storage place having a refrigerator space of less than 50,000 cubic feet,

and $25.00 for each storage place having a refrigerator space of 50,000 cubic feet, and less than 100,000 cubic feet, and $50.00 for each such storage place having a refrigerator space of 100,000 cubic feet or more.

Sec. 13. *Violation of act, penalty:* Any person, firm or corporation violating any of the provisions of this act shall upon conviction be punished for the first offense by a fine not exceeding five hundred dollars, and for the second offense by a fine not exceeding one thousand dollars or by imprisonment for not more than six months, or by both fine and imprisonment.

DECISIONS AFFECTING WAREHOUSEMEN

A.

Bailment—Delivery to true owner always good defense for the bailee—Conversion:—A bailee is bound to restore the property to his bailor, or account for it, but he has in legal contemplation accounted for it when he has delivered it to one whose demand and right of possession are paramount to that of his bailor. He may, if he chooses, yield possession to a stranger claiming the property, by taking the risk of establishing the title thus recognized. A refusal to deliver to the rightful owner constitutes a conversion of the property. *Shellenberg* v. *Fremont, E. & M. V. R. Co.,* 45 Neb. 487.

Same—Special contract:—Where a bailee agreed to keep property intrusted to him in a vault, he was bound under the terms of his contract to so keep the property, although, under the general principles of law governing his duty as bailee, he would not have been bound to exercise so high a degree of care. *Butler* v. *Greene,* 49 Neb. 280.

Same—Involuntary bailee—Entitled to compensation:—An involuntary bailee of goods is entitled to be paid a reasonable compensation for the storage and care until they are demanded of him. This case distinguished from *Moline, Milburn & Stoddard* v. *Neville,* 38 Neb. 433, where judgment was given for plaintiff who had declared on an express contract, which judgment was reversed on appeal for the reason that the verdict, finding that an express contract existed, was unsustained by the

evidence. *Moline, Milburn & Stoddard Co.* v. *Neville,* 52 Neb. 574.

B.

Ordinary care:—A bailee is required to exercise such care as a person of reasonable prudence would exercise under similar circumstances. *Butler* v. *Greene,* 49 Neb. 280.

Conversion—Failure to deliver on demand:—A bailee in possession of property belonging to another is under duty to surrender it upon demand upon the payment of just charges. A sufficient excuse would exist if there had been a prior lawful seizure of the property under judicial process issued against the owner. A refusal to surrender without a valid excuse constitutes a conversion for which the bailee is liable. *Wood Harvester Co.* v. *Dobry,* 59 Neb. 590.

H.

Lien—Possession essential—Rule stated:—It is a fundamental rule, that exclusive possession of the claimant whether a factor, broker or warehouseman, is essential to the existence, or continuance, of a lien in favor of one who holds property in subordination to the will or control of another. *Moline, M. & S. Co.* v. *Wood, M. & R. M. Co.,* 49 Neb. 869.

Same—No lien attaches if contrary to terms of contract:—Where a defendant warehouseman contracted to receive all of the goods consigned to it by the plaintiff, to store the same in its warehouse, and "to reship any of said goods or parts of same," on the order of the plaintiff, or his agents, it was *held* that this provision negatived any lien of the warehouseman for storage charges. This condition of the contract being interposed as preserving to the plaintiff his right, at pleasure, to sell and deliver the goods consigned to the defendant, and as imposing upon defendant a corresponding duty to yield possession thereof upon plaintiff's order, relying upon the personal credit of the latter for the amount of his storage charges. *Moline, M. & S. Co.* v. *Wood, M. & R. M. Co.,* 49 Neb. 869.

Same—Conditions under which it did not arise:—Plaintiff's husband had been a tenant of a building and at the close of his tenancy, asked leave to permit certain property, consisting of bricks, lumber, a boiler and a large sheet iron smoke house, to remain until such time as it should be required to be removed.

Under this arrangement defendant was paid $10 per month for two months. Eight or nine months later demand was made for the property which was refused until the storage charges were paid. *Held:* that a warehouseman's lien did not arise. *Webster* v. *Keck*, 64 Neb. 1.

K.

Execution—Cannot issue against bailee:—Property held by a bailee as such cannot be lawfully attached in an execution issued against him. *McClelland et al.* v. *Scroggin*, 35 Neb. 536.

Q.

Warehouse receipt—Negotiation after withdrawal of part of the deposited property:—The plaintiff, a warehouseman, had issued a receipt for property stored in his warehouse to the depositor and owner. The owner of the property withdrew a part thereof from the warehouse and subsequently assigned the receipt for the full amount to a purchaser for value and without notice that part of the property had been withdrawn. The purchaser presented the receipt to plaintiff who delivered all the original property remaining and paid to such purchaser the value of the property previously withdrawn. In an action against the former owner *held* that plaintiff was entitled to recover the amount paid the purchaser. *Michel* v. *Ware*, 3 Neb. 229.

Same—Same—Qualified indorsement—Effect:—An indorsement of a warehouse receipt "without guarantee" will not release the assignor of the implied warranty governing in all sales of property, that the subject-matter of the contract is *in esse* at the time it is made. *Id.*

Same—Delivery without return of receipt—Conversion—Receipt need not be in any particular form:—The defendant, a warehouseman, received and stored corn and issued therefor a receipt, as follows: "Received in store for account of B. & W., 3,000 sacks of corn." Subsequently, and without the knowledge of the defendant, B. & W. assigned the receipt to the plaintiff, as security for a pre-existing debt. The defendant delivered to B. & W. the corn represented by this receipt, and did not procure the return of the receipt. *Held:* that, on the above state of facts, the defendant warehouseman was liable to the plaintiff for the value of the corn. *Further held* that the contention that the receipt issued was not a formal warehouse receipt which did not

provide in terms that it might be assigned, could not be sustained. *Harris* v. *Bradley*, 2 Dill. 284.

Same—Who bona fide holder, a question for the jury:—Whether or not a person who acquires a warehouse receipt by assignment is a *bona fide* holder is one for the determination of the jury. *Michel* v. *Ware*, 3 Neb. 229.

R.

Bill of lading—Indorsement—Effect:—Bills of lading are symbols of property, and when properly indorsed operate as a delivery of the property itself, investing the indorsees with a constructive custody which serves all the purposes of an actual possession, and so continues until there is a valid and complete delivery of the property, under and in pursuance of the bill of lading, to the persons entitled to receive the same. *Union Pacific Ry. Co.* v. *Johnson et al.*, 45 Neb. 57.

CHAPTER XXVIII

NEVADA

LAWS PERTAINING TO WAREHOUSEMEN

The Uniform Warehouse Receipts Act is in force. It was approved March 26, 1913. Statutes of Nev. 1913, p. 424.

DECISIONS AFFECTING WAREHOUSEMEN

A.

Bailment—Presumption if goods are lost—Conversion:—When a person is intrusted with the care and custody of goods, it is his duty to return them at the end of the bailment, or account for their loss or show that it happened without legal negligence on his part. If he fails to do either the presumption is that he has converted them, or that they have been lost through his negligence, and he is responsible for them. *Dolan* v. *Clark*, 23 Nev. 203.

B.

Same—Ordinary care—Gross negligence:—This is equally true whether by the nature of the bailment, the bailee is bound to exercise ordinary care and diligence or is liable only for gross neglect. *Id.*

N.

Same—Loss of goods—Burden of proof:—The burden of proving that they have been lost without his fault, being upon him, it is not sufficient for him to simply produce evidence to that effect. He must establish this fact. *Id.*

CHAPTER XXIX

NEW HAMPSHIRE

LAWS PERTAINING TO WAREHOUSEMEN

Bailee converting to his own use—Larceny:—If any person to whom any money, goods, or property which may be the subject of larceny shall have been delivered or intrusted for keeping, or carriage, or use, or for manufacture, or work thereon, shall fraudulently dispose of or convert to his own use the same or any part thereof, or shall secrete the same or any part thereof, with intent to fraudulently dispose of or convert to his own use, he shall be deemed guilty of larceny thereof, and shall be punished as for the larceny of goods of the same value. Sec. 11, ch. 275, P. S. 1901.

DECISIONS AFFECTING WAREHOUSEMEN

A.

Bailment—Sale by bailee without authority—Bailor protected:—If a bailee sell property without authority, a purchaser, although buying in good faith, and without notice, acquires no title and the owner may recover his property or its value from any one in possession. *Johnson* v. *Willey*, 46 N. H. 75; *Sanborn* v. *Colman*, 6 N. H. 14; *Lovejoy* v. *Jones*, 30 N. H. 169; *Sargent* v. *Gile*, 8 N. H. 325.

B.

Ordinary negligence:—A bailee for hire is answerable for ordinary negligence. *Shelden* v. *Robinson*, 7 N. H. 157; *Smith* v. *Nashua & Lowell R. R.*, 27 N. H. 86.

H.

Lien—Waiver of—Possession:—The right of lien is to be deemed to be waived when the party enters into a special agree-

NOTE—It seems that there are, in New Hampshire, no statutes pertaining to warehousemen, as such.

ment inconsistent with the existence of the lien, or from which a waiver of it may be fairly inferred. Possession is not only essential to the creation, but also to the continuance of a lien; when the party voluntarily parts with the possession of the property upon which the lien has attached, he is divested of the lien. *Pickett* v. *Bullock*, 52 N. H. 354.

K.

Attachment against bailed property:—Where property has been bailed for hire, for a specific time, a creditor of the bailor cannot attach the property and take it from the bailee during the term of the bailment. Where such attachment was made, and the property removed by the officer, *held* that the bailee was, notwithstanding, liable to the bailor for rent. *Hartford* v. *Jackson*, 11 N. H. 145.

CHAPTER XXX

NEW JERSEY

LAWS PERTAINING TO WAREHOUSEMEN

The Uniform Warehouse Receipts Act is in force in New Jersey. It took effect May 7, 1907. Pub. L. 1907, Ch. 133, p. 341. 4 Comp. Stats. N. J. 1911, p. 5777. Also this volume, p. 1.

An Act to prevent the issue of false receipts and to punish fraudulent transfers of property by warehousemen, wharfingers and others, and to provide for the transfer of merchandise, receipts and other vouchers by indorsement. Approved March 11, 1881.

Warehouseman not to issue receipt, etc.—Unless goods, etc., shall be in store and under his control:—That no warehouseman, wharfinger, public or private inspector, or custodian of property, or other person or corporation, shall issue any receipt, acceptance of an order, or other voucher, for or upon any goods, wares, merchandise, provisions, grains, flour, or other produce or commodity, to any person or persons, or corporation, purporting to be the owner or owners thereof, or entitled or claiming to receive the same, unless such goods, wares, merchandise, provisions, grain, flour or other commodity shall have been actually received into the store or upon the premises of such warehouseman, wharfinger, inspector, custodian or other person, or corporation, as stated therein, and shall be in the store or upon the premises as aforesaid, and under his or its control at the time of issuing such receipt, acceptance or voucher. P. L. 1881, p. 100 sec. 1. (Also 4 Comp. Stats. N. J. 1911, p. 5787.)

Not to issue receipt, etc.—As security for indebtedness, unless goods, etc., shall be in store and under his control:—That no warehouseman, wharfinger, custodian or other person or corporation shall issue, or cause to be issued, any receipt or other voucher upon any goods, wares, merchandise, provisions, grain, flour or other produce or commodity, to any person or persons, or corporation, as security for any money loaned or

other indebtedness, unless such goods, wares, merchandise, provisions, grain, flour or other produce or commodity shall be at the time of issuing such receipt or other voucher in the custody of such warehouseman, wharfinger or other person or corporation, and shall be in store or upon the premises and under his or its control at the time of issuing such receipt or other voucher as aforesaid. *Id.* sec. 2.

When not to issue second or duplicate receipt, etc.:—That no warehouseman, wharfinger, inspector, custodian or other person or corporation, shall issue any second or duplicate receipt, acceptance or other voucher, for or upon any goods, wares, merchandise, provisions, grain, flour or other produce or commodity while any former receipt, acceptance or voucher, for or upon any such wares, merchandise, provisions, grain, flour or other produce or commodity as aforesaid, or any part thereof, shall be outstanding and uncancelled without stamping or writing in ink across the face of the same "duplicate." *Id.* sec. 3.

Not to sell or remove goods, etc., for which receipt has been given, without consent of person holding receipt:—That no warehouseman, wharfinger, custodian or other person or corporation, shall sell or incumber, ship, transfer or in any manner remove beyond his immediate control any goods, wares, merchandise, provisions, grain, flour or other produce or commodity, for which a receipt shall have been given by him as aforesaid, whether received for storing, shipping, grinding, manufacturing or other purposes, without the written consent of the person or persons holding such receipt, except in case of a notice in writing served upon the person holding such receipt, demanding removal of the same, in which case the same shall be removed within twenty days after the service of such notice. *Id.* sec. 4.

Master of vessel, etc., not to give bill of lading, etc., unless goods have actually been shipped:—That no master, owner or agent of any vessel, or boat of any description, or officer or agent of any railroad company, or other person, shall sign or give any bill of lading, receipt or other voucher or document, for any merchandise or property, from which it shall appear that such merchandise or property has been shipped on board any vessel, boat or railroad car unless the same shall have been actually shipped, and put on board such vessel, boat or car, and shall be at the time actually on board or delivered to such vessel, boat,

or car, to be carried and conveyed as expressed in such bill of lading or other voucher or document. *Id.* sec. 5.

How warehouse receipts, etc., may be transferred:—That all warehouse receipts or other vouchers given for any goods, wares, merchandise, provisions, grain, flour or other produce or commodity stored or deposited with any warehousemen, wharfinger, corporation or other person or persons, may be transferred by indorsement or delivery thereof, and any person to whom the same may be transferred shall be deemed and taken to be the owner of the goods, wares and merchandise therein specified without notice of such transfer, or an actual delivery, or change of possession of the goods, wares, merchandise, grain, flour or other produce or commodity named therein, so far as to give validity to any pledge, security, lien or transfer made or created by any person or persons, corporation or corporations; but no property shall be delivered except on surrender and cancellation of said original receipt or the indorsement of such delivery thereon, in case of partial delivery; all warehouse receipts, however, which shall have the words "not negotiable" plainly written, printed or stamped on the face thereof, shall be exempt from the provisions of this section: *Provided, however,* that the person or persons, corporation or corporations, to whom such receipts or vouchers are indorsed and delivered, shall be subject to the same conditions as the person or persons, corporation or corporations, to whom the same were originally delivered. *Id.* sec. 6.

Penalty for the violation of this act:—That any warehouseman, wharfinger, inspector, custodian or other person or corporation who shall violate any of the foregoing provisions of this act shall be deemed guilty of a misdemeanor, and, upon indictment and conviction, shall be fined in any sum not exceeding one thousand dollars or imprisonment not exceeding one year, or by both such fine and imprisonment; and all and every person or persons, corporation or corporations, aggrieved by the violation of any of the provisions of this act, may have and maintain an action at law against the person or persons, corporation or corporations, violating any of the provisions of this act, to recover all damages, immediate or consequential, which he or they may have sustained by reason of any such violation as aforesaid, before any court of competent jurisdiction, whether such person

shall have been convicted as hereinbefore mentioned or not. *Id.* sec. 7.

Act not to apply to property removed by operation of law:—That so much of this act as forbids the delivery of property, except on surrender and cancellation of the original receipt, or the indorsement of such delivery thereon, in case of partial delivery, shall not apply to property removed by operation of law. *Id.* sec. 8.

Above section construed:—A warehouseman cannot, without liability, deliver to any other than the bailee or his transferee and cannot defend against the receipt holder for damages on ground that he had delivered to another, and justify under that other's title. He can only justify for failure to redeliver on ground that "the property has been removed by operation of law." One claiming possession to property stored by another with a warehouseman must proceed to recover it by operation of law, and until it is so removed the warehouseman may deliver it to the receipt holder and the statute will protect him from a suit for conversion. *Wheeler & Wilson Mfg. Co.* v. *Brookfield*, 70 N. J. L. 703, Reversing 68 N. J. L. 478. See also *Stephenson* v. *Lichtenstein*, 72 N. J. L. 113.

When unlawful to deal in warehouse receipts:—1. It shall be unlawful to negotiate, issue, sell, assign, transfer, or deal with any receipt, or substitute for the same, designed to be understood as a warehouse receipt, or a receipt or voucher that goods, wares or merchandise are stored or deposited in any warehouse, or other place of storage, in or out of this State, if such goods, wares and merchandise are not so deposited and held on storage by the person, firm or corporation issuing such receipt or voucher, or if such receipt, duplicate, or voucher shall not be the only receipt, duplicate or voucher, issued against the same goods, wares and merchandise, unless such receipt substitute or voucher be plainly marked duplicate. Pub. L. 1910 Ch. 164 sec. 1, 2 Comp. Stat. N. J. 1910, p. 1810, sec. 212 f.

Penalty:—2. Any person, firm or corporation violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment not exceeding five years, or by a fine not exceeding one thousand dollars, or both. *Id.* Ch. 164 sec. 2. *Id.* sec. 212 g.

Food defined:—The term food as used in this act shall include any article used for food, except liquid food. Pub. L. 1911 Ch. 189 sec. 1.

Goods placed in cold storage must be dated—Articles from other States must bear date of storage:—It shall hereafter be unlawful for any person, persons or corporation engaged in the business of cold storage warehousemen, or in the business of refrigerating, or who own, operate, control or lease any cold storage or refrigerating plant to receive, nor shall any such person, persons or corporation place therein any article of food unless said food or the package containing the same is branded, stamped or marked in some conspicuous place, upon the receipt thereof, with the day, month and year when the same was received for storage or refrigerating, and it shall be unlawful for any such person, persons or corporation to receive any article of food which has been kept in cold storage without the State, unless at the time of such receipt such article offered is branded, stamped or marked with the day, month or year when it was placed in the cold storage in such other State, or such person, persons or corporation as shall have obtained the consent of the State Board of Health to receive such article of food. *Id.* Ch. 189 sec. 2.

Goods taken from storage must bear date of receipt:—It shall be unlawful for any person, persons or corporation engaged in the business of cold storage warehousemen or in the business of refrigerating, or who own, operate, control, or lease any cold storage or refrigerator plant, to permit any article of any kind whatsoever used for food now in the possession of any person, persons, or corporation now engaged in the buisness of cold storage warehousemen or refrigerating, or who own, operate, control or lease any cold storage or refrigerating plant, to be taken from their possession without first having branded, stamped or marked on said article of food or the package containing the same, in a conspicious place, the day, month and year when said article of food or package was received by any such person, persons or corporation engaged in the business aforesaid, or by any person, persons or corporation owning, operating, controlling or leasing any cold storage plant. *Id.* Ch. 189 sec. 3.

Maximum period for keeping goods:—It shall hereafter be unlawful for any person, persons or corporation engaged in the business of cold storage warehousemen or refrigerating, or

who own, operate, control or lease any cold storage or refrigerating plant, to keep in storage for preservation or otherwise any article of food a longer period than ten calendar months without the consent, as herein provided, of the State Board of Health or its duly authorized agents or officers, or except as hereinafter otherwise provided. *Id.* Ch. 189 sec. 4.

Inspection and supervision of plants—Rules and regulations—Inspectors:—The State Board of Health is hereby vested with full power and authority, and it shall be the duty of said board, to inspect and supervise all places in this State now or hereafter used for cold storage or refrigerating purposes; the members of the State Board of Health or its duly authorized agents or employes of said board shall be permitted access to such place or places and all parts thereof at all times for the purpose of seeing that said place or places are kept and maintained in a clean and sanitary condition, and for the purpose of determining whether or not the provisions of this act or any other act relating to articles of food are being complied with. The State Board of Health is hereby granted power and authority to adopt such reasonable rules and regulations as may be essential to the proper protection of the consumer of the commodities kept and preserved in such place or places, and the State Board of Health may appoint and designate from time to time such person or persons as said board may deem fit for the purpose of making such inspection. *Id.* Ch. 189 sec 5.

Quarterly reports made to State board of health:—All persons or corporations engaged in the business of cold storage warehousemen or in the business of refrigerating, or who own, operate, control or lease any cold storage or refrigerating plant, shall submit a quarterly report to the State Board of Health, upon printed forms to be provided by said State Board of Health, setting forth in itemized particulars the quantity of each and every article of food in storage, or in the control of said person or persons, corporation or corporations; said quarterly report shall be filed on or before the twenty-fifty day of January, April, July and October of each year, and reports so rendered shall show conditions existing upon the first day of the month in which said report is filed. *Id.* Ch. 189 sec. 6.

If food kept more than ten months report made—Extension of time may be granted:—In the event of any food, or any

article used for food, being kept or maintained in refrigerating or cold storage places for a longer period than ten months, report of such fact shall be filed by the person, persons or corporation operating such cold storage or refrigerating place, or by those owning, operating, controlling or leasing any cold storage or refrigerating plant with the State Board of Health, upon blanks to be provided by said State Board of Health upon application, and no such food or article used for food shall, after the expiration of said period of ten months, delivered to any person, persons or corporation without a certificate from the State Board of Health first had and obtained authorizing such delivery. Power is hereby given to said State Board of Health, or its proper agents, to extend the time when any particular food stuff or article used for food may be kept, maintained or preserved in such place or places. *Id.* Ch. 189 sec. 7.

As to transfer of goods:—The transfer of any food from one cold storage or refrigerating warehouse to another, for the purpose of evading any provision of this act, is hereby prohibited. *Id.* Ch. 189 sec. 8.

Re-storage prohibited:—When food which has been in cold storage is released therefrom for the purpose of placing on the market for sale, it shall be a violation of the provisions of this act to knowingly again place such food in cold storage. *Id.* Ch. 189 sec. 9.

Disposition of food kept beyond specified time—Sold publicly—Unless condemned:—Any article of food kept or preserved in any cold storage warehouse or refrigerating place for a longer period than herein provided, after at least twenty days' notice to the owner or consignor of such article of food to remove the same, shall be sold at public auction by the person, persons or corporation having the custody of the same, and at the place where the same is kept or preserved; such sale shall be within thirty days after the time limited for the keeping or preserving thereof, and the proceeds of such sale shall be paid to the owner or consignor thereof after deducting storage or other charges thereon, unless said food has been condemned as unfit for use by the State Board of Health, in which case it shall be destroyed or otherwise disposed of under such conditions as the State Board of Health may prescribe. *Id.* Ch. 189 sec. 10.

Penalties:—Any person or persons, corporation or corporation, or officer or officers thereof violating any of the provisions of this act, shall, upon conviction, be subject to a penalty of not exceeding five hundred dollars for the first offense. Any such person or persons, corporation or corporations, or officer or officers thereof, having once been convicted of violating any provision of this act, shall, upon a second offense, be held guilty of a misdemeanor. The conviction of any corporation shall not operate to relieve any officer or officers, agents or employers of such corporation from prosecution under the provisions of this act. *Id.* Ch. 189 sec. 11.

Validity of sections:—If any paragraph or provision of this act shall be questioned in any court and held to be invalid, the remainder of this act shall not be invalidated thereby, but shall remain in full force and effect. *Id.* Ch. 189 sec. 12.

Repealer—All acts or parts of acts inconsistent herewith are hereby repealed. *Id.* Ch. 189 sec. 13.

This act shall take effect immediately. *Id.* Ch. 189 sec. 13. Approved April 21, 1911.

When warehouseman not liable for taxed costs—Approved March 27, 1893:—Whenever a warehouseman at the time any goods or chattels are placed on storage with him shall obtain from the party placing such goods or chattels on storage a statement in writing that such goods are the sole and absolute property of the bailor aforesaid, and in any action of replevin thereafter brought in any court for the recovery of such goods or chattels by any person other than the bailor aforesaid, no costs of suit shall be adjudged, taxed or recovered against said warehousekeeper in any action aforesaid, whenever judgment is obtained against the defendant in such action. P. L. 1893, Ch. 258 sec. 1. 3 Comp. Stats. N. J. 1910, p. 4376, Sec. 37.

DECISIONS AFFECTING WAREHOUSEMEN

A.

Bailment—Interpleader:—A bailee is not entitled to call upon a party to interplead as to the right to the property, on the ground that, as to such party, he is a stakeholder or trustee, when at the time of the bailment, the party was unknown and

had no connection with the transaction, and if his claim respecting the property is true, the bailee's possession of the property, if not tortious at its inception, became so after demand and refusal to deliver. *First Nat. Bank v. Bininger et al.*, 11 C. E. Gr. 345.

Same—Same—Equity jurisdiction:—In cases of adverse independent titles, the party holding the property must defend himself as well as he can at law, and he is not entitled to the assistance of a court of equity, for that would be to assume the right to try merely legal titles, upon a controversy between different parties, where there is no privity of contract between them and the third person who calls for an interpleader. *Id.*

Conversion by bailee—May set up amount of claim secured by lien:—A bailee, converting goods on which he has bestowed labor and acquired a lien, may, in an action of trover brought by the owner, set up his lien-claim in reduction of damages. *Longstreet* v. *Phile*, 10 Vr. 63.

B.

Ordinary care—Question of fact for jury:—Plaintiff contracted with defendant a warehouseman "to store" certain household goods. Defendant carried the goods to his stable where they remained on the wagon for two days and nights, and were destroyed by fire. *Held:* that it was the duty of the defendant to take reasonable care of the goods and to provide a building reasonably fit and safe for storage. That the contract "to store" plaintiff's goods imposed on the warehouseman the duty to use such care and diligence as good and capable warehousemen are accustomed to show under similar circumstances. When, therefore, plaintiff proved the delivery of the chattels in good condition and their destruction thereafter by fire upon defendants premises, the law presumes the negligence of the bailee to be the cause of the loss, which presumption could only be rebutted by affirmative proof of defendant's reasonable care. It was further *held* that it was a question of fact for determination by the jury whether such reasonable care had been exercised. Judgment for plaintiff affirmed. *Levine* v. *Wolff*, 73 Atl. (N. J.) 73.

C.

Safe deposit boxes—Contents—Adverse claimants:—Adverse claimants to contents of safe deposit box may be required to

interplead. See Sections 2, 7, 17, 18 and 52, of Uniform Warehouse Receipts Act, this volume, page 1. *N. J. Guaranty & Tr. Co.* v. *Rector*, 75 Atl. 931.

H.

Liens—At common law and statutory:—It is one of the characteristics of common-law liens, as distinguished from liens created by contract or statute, that the former as a general rule attach to the property itself, without any reference to ownership, and override all other rights in the property, while the latter are subordinate to all prior existing rights therein. *Sullivan* v. *Clifton*, 26 Vr. 324.

Lien—Demand for more than contract price a waiver of:—The defendant T. agreed to cart plaintiff's goods from one place to another for $5.50. He refused to deliver the second load unless $7 were paid, and on plaintiff's refusal to pay, took the goods to the warehouse of L., who paid him $7 and issued a warehouse receipt. Plaintiff tendered L. the storage for one month then due, but L. demanded payment for an additional month, besides the $7. In action of replevin for the goods, *held:* that T.'s refusal to deliver the goods can only be justified in case he had a lien for his charges. If he had such a lien, he would have lost it by a tender and refusal of the $5.50 agreed upon. That his demand of a price in excess of the contract price amounted to a waiver of a tender of the $5.50. That L. was not entitled to be paid for two months' storage and his demand for the second month's storage in addition to the $7 was a waiver of any lien he may have had. Judgment for plaintiff. *Stephenson* v. *Lichtenstein*, 72 N. J. L. 113.

N.

Delivery—To one purchasing under conditional sale agreement—Demand:—One G purchased of plaintiff a sewing machine under an unrecorded conditional sale contract and afterward stored the machine with defendant, a warehouseman and received a warehouse receipt. Subsequently, G being in default in her payments, plaintiff demanded the machine of defendant, who refused to deliver it to plaintiff, and, instead, delivered it to G upon the presentation of the warehouse receipt. In an action in trover for conversion against warehouseman it was *held:* that

although at the time the machine was stored, G was in default in her payments and plaintiff was entitled to demand of G the machine and to retake it, as a matter of fact no demand was actually made before the institution of the suit. Hence, no demand under the agreement having been made, the proof was that the right of possession in the machine was in G and that plaintiff could not maintain the action. *Wheeler & Wilson Mfg. Co.* v. *Brookfield,* 70 N. J. L. 703. Reversing 68 N. J. L. 478. see also *Stephenson* v. *Lichtenstein,* 72 N. J. L. 113.

Same—Property removed by operation of law—Delivery to holder of receipt — Good defense: — A warehouseman cannot, without liability, deliver to any other than the bailee or his transferee, and cannot defend against the receipt holder for damages on ground that he had delivered to another and justify under that other's title. He can only justify for failure to redeliver on ground that "the property has been removed by operation of law." One claiming possession of property stored by another with a warehouseman must proceed to recover it by operation of law, and until it is so removed the warehouseman may deliver it to the receipt holder and the statute will protect him from a suit for conversion. *Id.* 68 N. J. L. 478.

U.

Attempt to compel service by injunction—Analogy between one conducting stockyard and a warehouseman—Not subject to public control — Equity jurisdiction: — Complainant, a railroad corporation, attempted to compel the defendant, a corporation created for the purpose of carrying on a stockyard business, to receive live stock offered to it under certain conditions, on the ground that as it was engaged in a business of a public nature it was required to receive live stock from any one offering the same. The court *held* that as defendant's business was one of recent origin it was difficult to find its counterpart in any of the established instruments of commerce, but that it bore a closer resemblance to the business carried on by warehousemen than to any other business known to the law. Further that in order to entitle complainant to the relief asked it must show its right thereto by virtue of a contract, a usage or a statute; that in this case complainant failed to prove any such contract, usage or law and that an equity court was therefore without jurisdiction. The case of

Munn v. *Illinois*, 94 U. S. 113, discussed and distinguished. There there was a duty owing under a statute, although it had been enacted subsequent to the erection of the warehouse and establishment of the business. The business was such, however, as was at all times subject to legislative control. *Delaware, L. & W. R. R. Co.* v. *Central Stock Yard & Transit Co.*, 18 Stew. 50, aff'd 1 Dick. 280.

CHAPTER XXXI

NEW MEXICO

LAWS PERTAINING TO WAREHOUSEMEN

The Uniform Warehouse Receipts Act is in force in New Mexico. It took effect June 16, 1909. Laws, New Mexico 1909, Ch. 38, p. 86. Also this volume p. 1.

Warehouse scales to be tested—False weights—Penalty:— All scales used for the weighing of property in public warehouses shall be subject to examination and test by any duly authorized public weighmaster, the expense of such tests to be paid by such warehouseman, and no scales shall be used for the weighing of grain or any other article after having been found incorrect, until put in order and found accurate and approved for further use by an authorized public weighmaster, and any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00). An Act establishing weights and measures approved March 17, 1913, Laws New Mexico, 1913, Chap. 82, sec. 29, pages 114, 121.

DECISIONS AFFECTING WAREHOUSEMEN

A.

Bailment—Ordinary care:—A bailee for hire is bound to take as much care of property intrusted with him as a prudent man, mindful of his own interests, would take of his own property of a similar kind. *Waldo* v. *Beckwith*, 1 N. Mex. 97.

R.

Bill of lading—Exemption, effect of:—Where the bill of lading provided that a carrier should not be liable for losses resulting

NOTE—It seems there are in New Mexico no other laws pertaining to warehousemen.

from unavoidable accident, it was *held* such an exemption would not limit or restrict the responsibility or liability imposed by law upon common carriers. *Seligman & Bro.* v. *Amijo*, 1 N. Mex. 459.

CHAPTER XXXII

NEW YORK

LAWS PERTAINING TO WAREHOUSEMEN

The Uniform Warehouse Receipts Act was enacted in its entirety on July 25, 1907, to take effect October 1, 1907, Laws of New York, 1907, Ch. 732, Vol. 2, p. 1706. With the exception of the last three sections which are omitted, the entire act is embodied in sections 90 to 143 inclusive of chapter 20 of the Consolidated Laws of New York, 1909, being article 9 of the General Business Law. Consolidated Laws of New York, 1909, Vol. 2, p. 1194, Ch. 20, Art. 9. Also this volume p. 1.

Incorporation:—Five or more persons may become a corporation for the purpose of taking and receiving upon deposit as bailee for safe-keeping and storage, jewelry, plate, money, specie, bullion, stocks, bonds, securities and valuable papers of any kind, and other valuable personal property, and guaranteeing their safety upon such terms and for such compensation as may be agreed upon by it and the respective bailors thereof; and to let out vaults, safes and other receptacles for the uses and purposes of such corporation, by making, acknowledging, and filing in the office of the clerk of the county in which its principal place of business is to be located, and a duplicate thereof in the office of the superintendent of banks, a certificate stating its corporate name, the business for which formed, the amount of its capital stock, which shall not exceed one million nor be less than one hundred thousand dollars, except in cities or villages of less than one hundred thousand inhabitants, in which the capital shall not be less than ten thousand dollars,—the number of shares of which its stock shall consist the term of its existence not to exceed fifty years, the number of directors who shall manage its concerns for the first year and their names, residences, occupations and postoffice addresses, and the name of the place in which its operations are to be carried on; such certificate must be approved before filing by the superintendent of banks. No

such corporation shall commence or transact business until the whole amount of its capital stock shall have been paid in nor make any loan or advance on any property left with it for storage or safekeeping. Any such corporation having a capital of one hundred thousand dollars or more, paid in cash, may open and maintain one or more branch offices in the place named in its certificate of corporation, provided, however, that the written approval of the superintendent of banks must be obtained for each branch so opened and maintained, which written approval may be given or withheld in his discretion. Every safe deposit company shall forfeit to the people of the State the sum of one thousand dollars for every week during which any branch office shall be maintained without such written approval. Consolidated Laws of New York, 1909, Vol. 1, Banking Law, Ch. 2, Art. 9, Sec. 300.

Directors:—The affairs of every such corporation shall be managed by not less than five nor more than thirteen directors, who shall be stockholders and a majority of whom shall be citizens of this State, and who shall, except for the first year, be annually elected by the stockholders at such time and place as shall be prescribed in the by-laws of the corporation. Notice of the time and place of holding such election shall be published not less than ten days previous thereto in a newspaper in the town or city in which the operations of such corporation shall be carried on, and the election shall be made by such of the stockholders as shall attend for that purpose either in person or by proxy. *Id.* Sec. 301.

Officers and by-laws:—There shall be a president of the corporation to be designated from the directors, and such subordinate officers as the corporation by its by-laws may designate, who may be elected or appointed, and required to give such security for the faithful performance of the duties of their offices as the corporation by its by-laws may require. The directors may make such by-laws as they shall deem proper for the management, disposition of the stock, property and business affairs of the corporation, not inconsistent with law and prescribing the duties of the officers and persons employed by it, the manner of the appointment and election of all officers, and for carrying on all kinds of business within the objects and purposes of the corporation. *Id.* Sec. 302.

Liability of stockholders:—The stockholders of every such corporation shall be jointly and severally liable for all debts that may be due and owing by it to an amount equal to the par value of their stock in such corporation over and above such stock, to be recovered of the stockholders who were such when the debt was contracted or the loss or damage sustained, or of any subsequent stockholder. Any stockholder who may have paid any demand against such corporation, either voluntarily or by compulsion, shall have a right to resort to the rest of the stockholders who are liable to contribution; and the dissolution of the corporation shall not release or effect the liability of any stockholder incurred before dissolution. *Id.* Sec. 303.

Remedy for non-payment of rent for safe:—1. If the amount due for the rental of any safe or box in the vaults of any such corporation shall not have been paid for two years, it may, at the expiration thereof, cause to be sent to the person in whose name such safe or box stands on its books a notice in writing in a securely closed postpaid registered letter, directed to such person at his postoffice address as recorded upon the books of the corporation, notifying such person that if the amount then due for the rental of such safe or box is not paid within thirty days from the date of such notice, the corporation will then cause such safe or box to be opened in the presence of its president or secretary or treasurer, and of a notary public not an officer or in the employ of the corporation, and the contents thereof, if any, to be inventoried and sealed by such notary public and be placed in one of the general safes or boxes of the corporation, at the expense of such person, which shall not exceed the original rental of the safe so opened, and for a period of not less than two years from the time such safe or box be opened, unless sooner removed by the owner thereof.

2. Upon the expiration of thirty days from the date of mailing such notice as aforesaid, and the failure of the person in whose name such safe or box stands on the books of the corporation to pay the amount due for the rental thereof, up to the date of such notice, the corporation may, in the presence of a notary public and of its president or secretary or treasurer, cause such safe or box to be opened, and the contents thereof, if any, to be removed, inventoried and sealed up by such notary public in a package, upon which such notary public shall distinctly mark

the name of the person in whose name such safe or box stood on the books of the corporation, and the date of the removal of same from such safe or box, and when such package has been so marked for identification by such notary public, it shall, in the presence of the president or secretary or treasurer of the corporation, be placed by such notary public in one of the general safes or boxes of the corporation, and thereafter the same shall remain in such safe or box for a period of not less than two years, unless sooner removed by the owner thereof, and such notary public shall thereupon, file with such corporation a certificate under his seal, which shall fully set out, the date of the opening of such safe or box the name of the person in whose name such safe or box stood and a list of the contents, if any.

3. A copy of such certificate shall within ten days thereafter be sent to the person in whose name such safe or box so opened, shall have stood on the books of such corporation, together with a notice that such contents will be kept, at the expense of such person, in a general safe or box in the vaults of such corporation, for a period not less than two years, which copy certificate shall be mailed to such person at his last known postoffice address, in a securely closed postpaid registered wrapper. At any time after the mailing of such certificate and notice, and before the expiration of two years, such person may require the delivery of the contents of such safe as shown by said certificate, upon the payment of all rentals due at the time of the opening of such safe or box, and the cost of opening such box, the fees of the notary public for issuing his certificate thereon, and the payment of all further charges accruing during the period such contents shall remain in the general safe or box of such corporation.

4. After the expiration of two years from the time of mailing the certificate herein provided for, to the person in whose name such safe or box shall have stood at the time of the opening thereof, the said corporation shall cause to be mailed in a securely closed postpaid wrapper, registered and addressed to such person at his last known postoffice address, a notice stating that two years have elapsed since the opening of the safe or box and the mailing of the certificate thereof, and that the said corporation will sell all the property or articles of value set out in said certificate, at a time and suitable place to be stated in such notice, not less than thirty days from the time of mailing such notice, and stating the amount which shall then be due for rental up to

the time of opening such safe, the cost of opening thereof, and the further cost of safekeeping of all of such contents for the period since the opening of said safe or box, and unless such person shall pay on or before the day mentioned all said sums, and all charges accruing to the time of payment, including advertising, the said corporation shall sell all the property or articles of value set out in said certificate, at public auction, at the time and place stated in said notice, and a notice of the time and place of such sale shall be published once within ten days prior to such sale, in a newspaper, published in a place where such sale is held.

5. From the proceeds of such sale, the said corporation shall satisfy and deduct thereout all its said charges as stated in said notice, together with any further charges that shall have accrued since the mailing thereof, together with all reasonable charges of said notice, advertising, and of the said sale. The balance, if any, of such proceeds shall be deposited by the said corporation, within thirty days after the receipt of the same, with the treasurer or chamberlain of the city, if any, or if none, with the county treasurer of the county within which such sale was held. There shall be filed with such safe deposit a certificate of the said corporation, stating the name and last known place of residence of the owner of the property sold, the articles sold, the price obtained therefor, that the notice in subdivision four, herein reffuired, was duly mailed and the receipt of the postoffice attached thereto. The officer with whom such balance is deposited shall credit the same to the owner of the property, and pay the same to such owner, his assignee, or legal representative, on demand and satisfactory evidence of identity. If such balance remains in the possession of such officer for a period of ten years, unclaimed by the person legally entitled thereto, it shall be transferred to the general funds of the city or county, and be applied and used as all other moneys belonging to such city or county.

6. Whenever the contents of any such safe or box, so opened as hereinbefore provided, shall consist either wholly or in part, of documents or letters or other papers of a private nature, such documents, letters or papers shall not be sold but shall be retained by such corporation for a period of ten years from the time of the opening of said box, and unless sooner claimed by the owner thereof, may after the expiration of such period, be by such corporation destroyed in the presence of an officer of such

corporation and a notary public not an officer or in the employ of the corporation.

7. The proceeding provisions hereof do not preclude any other remedy by action or otherwise now existing for the enforcement of the claims of such corporation against the person in whose name such safe or box stood, nor bar the right of such corporation to recover so much of the debt due it as shall not be paid by the proceeds of the sale of the property. *Id.* sec. 304 as amended by act which took effect June 20, 1911, Laws of New York, 1911, Vol. 1, Ch. 371, p. 851.

Lien of safe deposit companies on packages left for safe keeping or storage in vaults, for which receipts are issued:—Whenever any corporation referred to in this article shall take and receive upon deposit, as bailee, for safe keeping and storage, jewelry, plate, money, specie, bullion or other valuable personal property, and shall issue a receipt therefor, such corporation shall as to such property be deemed a warehouseman, and all existing statutes and laws affecting warehousemen, shall apply to such deposits, and such corporation shall have a lien on such deposits or the proceeds thereof in the same manner and with the same effect, and the same shall be enforced in the same manner, as now provided by law with reference to "warehousemen." *Id.* Sec. 305 as amended by act which took effect June 21, 1911, Laws of New York, 1911, Vol. 1, Ch. 382, p. 868.

Factors' act:—Every factor or other agent, intrusted with the possession of any bill of lading, custom-house permit, or warehouseman's receipt for the delivery of any merchandise, and every such factor or agent not having the documentary evidence of title, who shall be intrusted with the possession of any merchandise for the purpose of sale, or as a security for any advances to be made or obtained thereon, shall be deemed to be the true owner thereof, so far as to give validity to any contract made by such agent with any other person, for the sale or disposition of the whole or any part of such merchandise, for any money advanced, or negotiable instrument or other obligation in writing given by such other person upon the faith thereof.

2. Every person who shall hereafter accept or take any such merchandise in deposit from any such agent, as a security for any antecedent debt or demand, shall not acquire thereby, or

enforce any right or interest in or to such merchandise or document, other than was possessed or might have been enforced by such agent at the time of such deposit.

3. Nothing contained in the preceding subdivisions of this section shall be construed to prevent the true owner of any merchandise so deposited, from demanding or receiving the same, upon prepayment of the money advanced, or on restoration of the security given, on the deposit of such merchandise, and upon satisfying such lien as may exist thereon in favor of the agent who may have deposited the same; nor from recovering any balance which may remain in the hands of the person with whom such merchandise shall have been deposited, as the produce of the sale thereof, after satisfying the amount justly due to such person by reason of such deposit.

4. Nothing contained in this section shall authorize a common carrier, warehouseman, or other person to whom merchandise or other property may be committed for transportation or storage only, to sell or hypothecate the same. Consolidated Laws of New York, 1909, Vol. 4, Personal Property Law, Ch. 41 Art. 3, Sec. 43.

Liability of certain corporations to tax:—If a foreign executor, administrator or trustee shall assign or transfer any stock or obligations in this state standing in the name of a decedent, or in trust for a decedent, liable to any such tax, the tax shall be paid to the state comptroller or the treasurer of the proper county on the transfer thereof. No safe deposit company, trust company, corporation, bank or other institution, person or persons having in possession or under control securities, deposits, or other assets belonging to or standing in the name of a decedent who was a resident or non-resident, or belonging to, or standing in the joint names of such a decedent and one or more persons, including the shares of the capital stock of, or other interests in the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer herein provided, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or to the survivor or survivors, when held in the joint names of a decedent and one or more persons, or upon their order or request, unless notice of the time and place of such intended delivery shall personally be served upon the state comptroller at least ten

days prior to said delivery or transfer; nor shall any safe deposit company, trust company, corporation, bank or other institution, person or persons deliver or transfer any securities, deposits or other assets belonging to or standing in the name of a decedent, or belonging to, or standing in the joint names of a decedent and one or more persons, including the shares of the capital stock of, or other interest in, the safe deposit company, turst company, corporation, bank or other institution making the delivery or transfer, without retaining a sufficient portion or amount thereof to pay any tax and interest which may thereafter be assessed on account of the delivery or transfer of such securities, deposits, or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, under the provisions of this article, unless the state comptroller consents thereto in writing. And it shall be lawful for the said state comptroller, personally or by representative, to examine said securities, deposits or assets at the time of such delivery or transfer. Failure to serve such notice or failure to allow such examination or failure to retain a sufficient portion or amount to pay such tax and interest as herein provided shall render said safe deposit company, trust company, corporation, bank or other institution, person or persons liable to the payment of the amount of the tax and interest due or thereafter to become due upon said securities, deposits or other assets, including the shares of the capital stock of, or other interest in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, and in addition thereto, a penalty of not less than five or more than twenty-five thousand dollars; and the payment of such tax and interest thereon, or of the penalty above prescribed, or both, may be enforced in an action brought by the state comptroller in any court of competent jurisdiction. Consolidated Laws of New York, 1909, Vol. 5, Tax Law Ch. 60, sec. 227.

Above section construed—Contents of rented safe not "in possession or under control" of safe deposit company:—A safe deposit company rented a safe which was recorded on its books in the name of "Russell Sage or Charles W. Osborne" who were to severally have access to the same. Osborne's right of access was to be uninterrupted in the event of the death of Sage. After Sage's death Osborne's use of the safe continued as before

and the company did nothing to prevent Osborne from removing the contents of the safe and it gave no notice of any kind to the State Comptroller. An action was brought by the Comptroller in the name of the people of the state against the safe deposit company to enforce the penalty of one thousand dollars as provided in the above section as it stood on July 22, 1906. (Laws N. Y. 1905, Vol. I, Ch. 368) and prior to the amendment of 1908 (Laws N. Y. 1908, Vol. I, Ch. 310). A judgment was entered upon a verdict in favor of the defendant and the state appealed to the Appellate Division. In affirming such judgment that court held it was not necessary to resort to the rule of strict construction applicable in cases of penal statutes because here clearly the defendant did not have "in possession or under control" the contents of the safe in question and hence the section was not applicable and therefore imposed no duty upon the defendant; that defendant could not have obeyed the statute without invading the legal rights of its customer. The court further held that the status of the parties bore a close analogy to that arising from the relation which exists between the tenants of a general office building and the landlord thereof, who keeps within his control and under his care and protection, the common means of access to the building and to the suites of offices therein, but as to which, subject to any regulations that may have been established by the landlord, the rights of the tenants are exclusive. *People of State of New York by Glynn, Comptroller*, v. *Mercantile Safe Deposit Co.*, 143 N. Y. Supp. 849.

NOTE—A statute, the same as that under which this case was brought, held to be constitutional in Illinois. National Safe Deposit Co. v. Stead, 250 Ill. 584. See also this volume, Illinois Decisions, page 202.

Cold storage amendment:—By chapter 335 of the laws of 1911, chapter 45 of the Consolidated Laws of 1909, being an act in relation to the public health, is amended by adding after the 16th section thereof the following nine sections: Laws New York, 1911, Vol. 1, Ch. 335, p. 774.

Sec. 335. *Definitions.* The term food as used in this article shall include any article, except nuts, fruits, cheese and vegetables, used for food by man or animal and every ingredient of such article.

Sec. 336. *Cold storage food to be marked.* It shall hereafter be unlawful for any person or persons, corporation or corpora-

tions, engaged in the business of cold storage warehousemen or in the business of refrigerating, to receive any kind of food unless the said food is in an apparently pure and wholesome condition, and the food or the package containing the same is branded, stamped or marked, in some conspicuous place, with the day, month and year, when the same is received in storage or refrigeration.

It shall be unlawful for any person or persons, corporation or corporations, engaged in the business of cold storage warehousemen or in the business of refrigerating to permit any article of any kind whatsoever used for food in the possession of any person or persons, corporation or corporations, engaged in the business of cold storage warehousemen or refrigerating, to be taken from their possession without first having branded, stamped or marked on said food stuffs or the package containing same, in a conspicuous place, the day, month and year, when said food stuffs or package was removed from cold storage or refrigeration.

License to be secured:—On and after the first day of October, nineteen hundred and thirteen, no person or persons, firm, corporation or corporations other than those engaged solely and exclusively in the business of storing nuts, fruit, cheese or vegetables only, shall operate a cold storage or refrigerating warehouse without a license to be issued by the state department of health. Any person or persons, firm, corporation or corporations desiring such a license shall make written application to the department on or before the first day of September, nineteen hundred and thirteen, stating the location of its plant or plants. On receipt of the application the department shall cause an examination to be made into the sanitary condition of such plant or plants and if they are found to be in a sanitary condition and otherwise properly equipped for the business of cold storage, the department shall cause a license to be issued authorizing the applicant to operate a cold storage or refrigerating warehouse for and during the period of one year. The license shall be issued upon payment by the applicant of a license fee of twenty-five dollars to the state treasurer. On or before the first day of September in each subsequent year all person or persons, firm, corporation or corporations, engaged in the business of cold storage or refrigerating warehousing, shall make a renewal application to the state department of health, stating the location of its plant or plants.

If the state department of health is satisfied that the plant or plants continue in a sanitary condition and are otherwise properly equipped for the business of cold storage, the department shall on or before the first day of October in each subsequent year issue a renewal license for one year on the payment of the license fee of twenty-five dollars. Should any person or persons, firm, corporation or corporations, desire to begin the business of cold storage or refrigerating warehousing after the first day of October, nineteen hundred and thirteen, it or they shall file an application with the state department of health stating the location of its plant or plants, and the state department of health after an examination on payment of the license fee may then issue a license to such applicant, for a period up to and including the first day of October next following. In the event that any warehouse licensed under the provisions of this section, or any portion thereof, shall be deemed by the state department of health to be conducted in an unsanitary manner, it shall be the duty of the department to close such warehouse, or portion thereof, until it shall be put in satisfactory condition, and the department shall have power also to suspend the license in case the needed changes shall not be made within a reasonable time.

An Act to amend the Public Health Law in relation to cold storage. Took effect May 16, 1913, Laws New York, 1913, Vol. 3, Chap. 560, page 1537.

Sec. 337. *Time that cold storage foods may be kept.* It shall hereafter be unlawful for any person, corporation or corporations, engaged in the business of cold storage warehousemen or refrigerating, to keep in storage for preservation or otherwise any kind of food or any article used for food a longer period than ten calendar months, excepting butter products which may be kept in said cold storage or refrigeration twelve calendar months.

Sec. 338. *Powers of state commissioner of health.* The state commissioner of health is hereby vested with full power and authority to inspect and supervise all places in this State now used or hereafter to be used for cold storage or refrigerating purposes; the state commissioner of health or his duly authorized agents or employees shall be permitted access to such place or places and all parts thereof at all times for the purpose of seeing that said place or places are kept and maintained in a clean and

sanitary manner, and for the purpose of determining whether or not the provisions of this article or any other act relating to food stuffs are being complied with. The power of supervision hereby granted shall extend to enable the state commissioner of health to adopt such reasonable rules and regulations as may be determined upon from time to time as essential to the proper protection of the consumer of the commodities kept and preserved in such place or places, and the state commissioner of health may appoint and designate from time to time such person or persons as he deems fit for the purpose of making such inspections.

Food to be condemned:—The state commissioner of health may seize and condemn any articles of food in cold storage warehouses which are found to be unfit for use and such articles of food shall be destroyed or otherwise disposed of under such conditions as the state commissioner of health may prescribe.

An Act to amend the Public Health Law in relation to cold storage. Took effect May 16, 1913, Laws New York, 1913, Vol. 3, Chap. 506, page 1538.

Sec. 339. *Reports of warehousemen.* All persons or corporations engaged in the business of cold storage warehousemen, or in the business of refrigerating, shall submit reports to the state department of health, upon printed forms to be provided by said state department of health, setting forth in itemized particulars the quantity of each and every foodstuff in storage or in the control of said person or persons, corporation or corporations; said report shall be filed on or before the twenty-fifth day of January, May and September of each year, and reports so rendered shall show conditions existing upon the first day of the month in which said report is filed.

Sec. 339 a. *Transfers from one warehouse to another.* The transfer of any food from one cold storage or refrigerating warehouse to another for the purpose of evading any provisions of this article is hereby prohibited.

Sec. 339 b. *Prohibits return of food to cold storage when once released for purpose of placing same on market for sale.* When food has been in cold storage or refrigeration and is released therefrom for the purpose of placing the same on the market for sale, it shall be a violation of the provisions of this article to again place such food in cold storage or refrigeration.

Sec. 339 c. *Prohibits sale of food kept in cold storage without representing said fact.* It shall be a violation of the provisions of this article to sell any article or articles of food that have been kept in cold storage or refrigeration, without representing the same to have been so kept.

Sec. 339 d. *Penalties.* Any person or persons, corporation or corporations, or officer or officers thereof, violating any of the provisions of this article shall be guilty of a misdemeanor. The conviction of any corporation shall not operate to relieve any officer or officers, agents or employees of such corporation from prosecution under the provisions of this article.

Enforcement of liens on personal property by sale—Sale of personal property to satisfy a lien:—A lien against personal property, other than a mortgage on chattels, if in the legal possession of the lienor, may be satisfied by the public sale of such property according to the provisions of this article. Consolidated Laws of N. Y. 1909, Vol. 3, p. 2166, Lien Law. Ch. 33, Art. 9. sec. 200.

Before such sale is held the lienor shall serve a notice upon the owner with due diligence within such county, if such owner can be found when such lien arose, if not, then to the person for whose account the same is then held personally, provided such service can be made with due diligence, within the county where such lien arose, but if such person cannot with due diligence be found within such county, then such notice shall be served by mailing it to him at his last known place of residence, or to his last known postoffice address. A like notice shall be served in the same way upon any person who shall have given to the lienor notice of an interest in the property subject to the lien. Such notice shall contain a statement of the following facts; First, the nature of the debt or the agreement under which the lien arose, with an itemized statement of the claim and the time when due; second, a brief description of the personal property against which the lien exists; third, the estimated value of such property; fourth, the amount of such lien at the date of the notice. It shall also require such owner or person to pay the amount of such lien on or before a day mentioned therein, not less than ten days from the service thereof, and shall state the time when and place where such property will be sold, if such amount is not paid. If the agreement on which the lien

is based provides for the continuous care of property the lienor is also entitled to receive all sums which may accrue under the agreement, subsequent to the notice and prior to payment or a sale of the property; and the notice shall contain a statement that such additional sum is demanded. Such notice shall be verified by the lienor to the effect that the lien upon such property is valid, that the debt upon which such lien is founded is due, and has not been paid and that the facts stated in such notice are true to the best of his knowledgt and belief. *Id.* sec. 201.

Sale to be advertised:—Each sale of personal property to satisfy a lien thereon shall be at public auction to the highest bidder, and shall be held in the city or town where the lien was acquired. After the time for the payment of the amount of the lien specified in the notice required to be served by the preceding section, notice of such sale, describing the property to be sold, and stating the name of the owner or person for whose account the same is then held and the time and place of such sale, shall be published once a week for two consecutive weeks, in a newspaper published in the town or city where such sale is to be held, and such sale shall be held not less than fifteen days from the first publication; if there be no newspaper published in such town, such notice shall be posted at least ten days before such sale in not less than six conspicuous places therein. *Id.* sec. 202.

Redemption before sale:—At any time before such property is so sold the owner thereof may redeem the same by paying to the lienor the amount due on account of the lien and whatever legitimate expenses have been incurred at the time of such payment in serving the notice and advertising the sale as required in this article. Upon making such payment, the owner of such property is entitled to the possession thereof. *Id.* sec. 203.

Disposition of proceeds:—Of the proceeds of such sale, the lienor shall retain an amount sufficient to satisfy his lien and the expenses of advertisment and sale. The balance of such proceeds, if any, shall be held by the lienor subject to the demand of the owner, or his assignee or legal representative, and a notice that such balance is so held shall be served personally or by mail upon the owner of the property sold. If such balance is not claimed by the owner or his assignee or legal representative

within thirty days from the day of sale, such balance shall be deposited with the treasurer or chamberlain of the city or village, or the supervisor of the town where such sale is held. There shall be filed with such deposit the affidavit of the lienor, stating the name and place of residence of the owner of the property sold, if known, the article sold, the prices obtained therefor, that the notice required by this article was duly served and how served upon such owner, and that such sale was legally and how advertised. There shall also be filed therewith a copy of the notice served upon the owner of the property and of the notice of sale published or posted as required by this article. The officer with whom such balance is deposited shall credit the same to the owner of the property, and pay the same to such owner, his assignee or legal representative, on demand and satisfactory evidence of identity. If such balance remains in the possession of such officer for a period of five years, unclaimed by the person legally entitled thereto, it shall be transferred to the general funds of the town, village or city, and be applied and used as other moneys belonging to such town, village or city. *Id.* sec. 204.

Remedy not exclusive:—The preceding provisions of this article do not preclude any other remedy by action or otherwise, now existing, for the enforcement of a lien against personal property, or bar the right to recover so much of the debt as shall not be paid by the proceeds of the sale of the property. *Id.* sec. 205.

Enforcement by action; when and in what courts:—An action may be maintained to foreclose a lien upon a chattel, for a sum of money, in any case where such a lien exists at the commencement of the action. The action may be brought in any court, of record or not of record, which would have jurisdiction to render a judgment, in an action founded upon a contract, for a sum equal to the amount of the lien. *Id.* sec. 206.

Warrant to seize chattel; proceedings thereupon:—Where the action is brought in the supreme court, the city court of the city of New York, or a county court, if the plaintiff is not in possession of the chattel, a warrant may be granted by the court, or a judge thereof, commanding the sheriff to seize the chattel and safely keep it to abide the final judgment in the action. The provisions of title third of chapter seven of the code of civil procedure apply to such warrant, and to the proceedings to

procure it, and after it has been issued, as if it was a warrant of attachment, except as otherwise expressly prescribed in this article. *Id.* Sec. 207.

Judgment:—In an action brought in a court specified in the last section, final judgment, in favor of the plaintiff, must specify the amount of the lien, and direct a sale of the chattel to satisfy the same and the costs, if any, by a referee appointed thereby, or an officer designated therein, in like manner as where a sheriff sells personal property by virtue of an execution; and the application by him of the proceeds of the sale, less his fees and expenses, to the payment of the amount of the lien, and the costs of the action. It must also provide for the payment of the surplus to the owner of the chattel, and for the safe keeping of the surplus, if necessary, until it is claimed by him. If a defendant, upon whom the summons is personally served, is liable for the amount of the lien, or for any part thereof, it may also award payment accordingly. *Id.* Sec. 208.

Action in inferior court:—Where the action is brought in a court, other than one of those specified in section two hundred and seven, if the plaintiff is not in possession of the chattel, a warrant, commanding the proper officer to seize the chattel, and safely keep it to abide the judgment, may be issued, in like manner as a warrant of attachment may be issued in an action founded upon a contract, brought in the same court; and the provisions of law, applicable to a warrant of attachment, issued out of that court, apply to a warrant, issued as prescribed in this section, and to the proceedings to procure it, and after it has been issued; except as otherwise specified in the judgment. A judgment in favor of the plaintiff, in such an action, must correspond to a judgment, rendered, as prescribed in the last section, except that it must direct the sale of the chattel by an officer to whom an execution, issued out of the court, may be directed; and the payment of the surplus, if its safe keeping is necessary, to the county treasurer, for the benefit of the owner. *Id.* Sec. 209.

Application:—Sections two hundred and six to two hundred and nine inclusive do not affect any existing right or remedy to foreclose or satisfy a lien upon a chattel, without action; and they do not apply to a case, where another mode of enforcing a lien upon a chattel is specially prescribed by law. *Id.* Sec. 210.

Fees and charges for elevators and warehouses:—The maximum charge for elevating, receiving, weighing and discharging grain by means of floating and stationary elevators and warehouses in any city having a population of one hundred and thirty thousand or over, shall not exceed five-eighths of one cent a bushel. In the process of handling grain by means of floating and stationary elevators, the lake vessels or propellers, the ocean vessels or steamships and canal boats shall only be required to pay the charge of trimming or shoveling to the leg of the elevator when unloading, and trimming cargo when loading; and in any case the fee charged for the use of a shovel operated by steam or any other mechanical power, in connection with any floating or stationary elevator, shall not exceed the sum of one dollar and fifty cents for each one thousand bushels elevated. For every violation of any provision of this section, the person committing such violation shall forfeit to the people of the State the sum of two hundred and fifty dollars. A person injured by a violation of this section may recover any damages sustained from the person violating the same. Consolidated Laws of New York, 1909, Vol. 2, General Business Law, Ch. 20, Art. 26, Sec. 396.

Overcharging, a misdemeanor:—A person who charges for elevating, receiving or discharging grain by means of floating or stationary elevators a greater sum than is allowed by law is guilty of a misdemeanor. Consolidated Laws, N. Y., 1909, Vol. 4, Penal Law, Ch. 40, Art. 40, Sec. 432.

Above act held to be constitutional:—The above act held to be a constitutional exercise of the police power of the State; that the business of elevating grain was one "affected with a public interest" and that therefore the legislature had a right to prescribe the maximum rates which might be charged for storage. *People* v. *Budd*, 117 N. Y. 1, aff'd 143 U. S. 517. (For complete collection of cases on the above see New York Decisions, pages 675 and 676.)

Demand loans of five thousand dollars and upwards, on collateral, may bear any interest:—In any case hereafter in which advances of money, repayable on demand, to an amount not less than five thousand dollars, are made upon warehouse receipts, bills of lading, certificates of stock, certificates of

deposit, bills of exchange, bonds or other negotiable instruments pledged as collateral security for such repayment, it shall be lawful to receive or to contract to receive and collect, as compensation for making such advances, any sum to be agreed upon in writing, by the parties to such transaction. Consolidated Laws, N. Y., 1909, Vol. 2, General Business Law, Ch. 20, Art. 25, Sec. 379.

DECISIONS AFFECTING WAREHOUSEMEN

B.

Ordinary care—Definition—Question of fact:—A warehouseman is bound to exercise ordinary care and diligence in respect to the property intrusted with him, which may be defined to be that degree of care which men of common prudence in general exert under similar circumstances, with regard to their own property or affairs. What omission or want of care would amount to ordinary neglect in such cases is, as a general rule, rather a matter of fact than law; and if there be any evidence to sustain the verdict of the jury, it will not be disturbed by an appellate court. *Smith* v. *Simms,* 51 How. Pr. 305; *Arent* v. *Squire,* 1 Daly, 350; *Jones* v. *Morgan,* 90 N. Y. 4; *Madan* v. *Covert,* 13 J. & S. 245; *Williamson* v. *N. Y., N. H. & H. R. R. Co.,* 22 St. Rep. 431; *Byrne* v. *Fargo,* 36 Misc. 543; *Schmidt* v. *Blood,* 42 Amer. Dec. 143; *Knapp* v. *Curtis & Root,* 9 Wend. 60; *Titts-worth* v. *Winnegar,* 51 Barb. 148; *Foote* v. *Storrs,* 2 Barb. 326; *Schmidt & Webb* v. *Blood & Green,* 9 Wend. 268; *Schwerin et al.* v. *McKie et al.,* 51 N. Y. 180; *Liverpool & Great Western Steam Co.* v. *Suitter et al.,* 17 Fed. Rep. 695; *Kaiser* v. *Latimer,* 9 App. Div. 36.

Same—Facts constituting lack of:—A statement that the building was "an absolutely fireproof building" held to constitute a

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NOTE—For act entitled "An act to improve the water front facilities of the city of New York, in relation to the receipt, delivery and shipment of freight" which took effect July 25, 1911, see Laws of New York, 1911, Ch. 776, p. 2058. See Ch. 778 in same volume for "An act to amend the transportation law by adding thereto an additional article, 10-a, providing for the incorporation of freight terminal companies." See also Forest, Fish and Game Law, Consolidated Laws of New York, 1909, Vol. 2, Ch. 19.

Among the powers conferred upon cities by "An Act to amend the general city law, in relation to the powers of cities," Chap. 247, Laws of New York, 1913, is the following:

To control and administer the water front and waterways of the city and to establish, maintain, operate and regulate docks, piers, wharves, warehouses and all adjuncts and facilities for navigation and commerce and for the utilization of the water front and waterways and adjacent property. Laws New York, 1913, Vol. 1, Chap. 247, Sec. 20, par. 8.

false representation, and old rags, burlap and excelsior, being in an old van near the elevator shaft was evidence from which might be inferred lack of care on the part of the warehouseman. Judgment for defendant reversed. *Clifford* v. *Universal Storage Warehouse & Express Co.*, 102 N. Y. S. 460.

Same—Prima facie case—Burden of proof—Presumption rebutted:—A *prima facie* case is made against a warehouseman when the plaintiff shows delivery to the warehouseman and the return of the goods in a damaged condition, or the warehouseman's failure to redeliver upon demand. The burden of proof is then upon the warehouseman to show that the damage or loss was not a result of a breach of the duty owed by him as warehouseman to the plaintiff. The theory that one is presumed to have done his duty until the contrary be shown does not apply to a case where a warehouseman delivers goods intrusted to his care in a damaged condition, or fails to deliver them. Such action on the part of the warehouseman rebuts this presumption. *Arent* v. *Squire*, 1 Daly, 347; *Reed* v. *Crowe et al.*, 13 Daly, 164; *Williamson* v. *N. Y., N. H. & H. R. R. Co.*, 22 St. Rep. 431; *Lynch* v. *Kluber*, 20 Misc. Rep. 601; *Draper* v. *D. & H. C. Co.*, 118 N. Y. 118.

Same—Same—Receipt stating goods "In good condition"—Warehouseman liable, when:—Evidence showed warehouseman gave receipt for plaintiff's goods to a transfer company, in which it was stated the goods were "In good condition." Subsequently plaintiff found his goods on the sidewalk in front of defendant's warehouse in a damaged condition. On appeal a judgment against the transfer company was reversed and a judgment against the warehouseman was affirmed. *Neville* v. *Woolverton*, 142 N. Y. S. 292.

Warehouseman—Liability for goods lost or stolen:—Warehouseman held liable for goods stolen although not "stored" in a technical sense, viz., delivery to respondent as a warehouseman and warehouse receipt issued. The carrier had the right to use a room to place goods therein and respondent had undertaken for hire to watch and care for room. *Evans* v. *N. Y. & P. S. S. Co.*, 163 Fed. 405.

When warehouseman liable as common carrier—Assuming to act as carrier—Termination of contract of storage:—A ware-

houseman had stored plaintiff's goods and the term for which they were stored having expired she thereupon paid all the storage charges due and surrendered the contract. Plaintiff then engaged the defendant warehouseman to remove the goods from his warehouse and take them to her home. Subsequently and while in the warehouse before being removed, the goods were destroyed by fire. *Held* that the contract of storage had terminated and that the defendant was liable as a carrier and hence as an insurer of the goods. *Snelling* v. *Yetter*, 25 App. Div. 590; *Wade* v. *Wheeler*, 3 Lans. 201, aff'd 47 N. Y. 658.

Delivery—Of key:—The delivery of the key of the warehouse containing the goods to be transferred *held* a delivery of the goods. *Wilkes* v. *Ferris*, 5 Johns. 335.

Same—To consignee without authority—Warehouseman liable for freight charges—Conversion:—Where a common carrier stores freight with a warehouseman, the possession of the warehouseman becomes that of the carrier, and if the warehouseman, without authority, delivers the goods to the consignee, he is liable to the carrier for the amount of the freight. The action of the warehouseman in this respect constitutes a conversion of the goods. *Compton* v. *Shaw*, 1 Hun, 441; *Williard* v. *Bridge*, 4 Barb. 361.

Same—To wife on forged order:—The defendants held several United States bonds for the plaintiff as his bailee. They had been instructed by the plaintiff not to deliver the bonds except upon his written order. It appeared that the wife of the plaintiff presented an order for the bonds to the defendants, purporting to be signed by her husband and that the defendants delivered the bonds to her. It was contended in behalf of the defendants that independent of any agency on the part of the wife, that because at common law a wife's possession of a chattel was deemed the possession of her husband, the delivery of the bonds to her was equivalent to a delivery to the plaintiff. It was *held* that this contention could not be sustained; that the bonds had been obtained fraudulently and that the defendants were liable therefor. Further that the attempt to show a cross liability on the part of the plaintiff for the fraud committed by his wife could not be allowed, as this would be equivalent to enforcing a right of action against the plaintiff alone for a tort committed wholly by his wife. *Kowing* v. *Manly et al.*, 49 N. Y. 192.

Same—Improper delivery to husband—Conversion:—A large quantity of jewelry was deposited with the defendant by plaintiff. A receipt was issued to her in which it was stated, "This receipt must be returned on delivery of the goods, and all liability under this receipt shall cease with the delivery of such package and contents to holder hereof." Subsequently the defendant delivered the jewelry to the husband of the plaintiff without the return of the receipt. In an action for the value thereof it was *held* that the defendant was liable therefor, that the wrongful delivery of the property to the husband of the plaintiff constituted a conversion. *Markoe* v. *Tiffany & Co.*, 26 App. Div. 95.

Same—What will not constitute—Evidence:—In an action against a warehouseman to recover for the loss of a trunk alleged to have been intrusted to him, the plaintiff's evidence showed that an expressman had left the trunk at the defendant's warehouse. On cross-examination the expressman was unable to say that he had delivered it at any particular door or had not actually left it in the street. Further, he did not recollect whether or not he had called the attention of any of the defendant's employees to the trunk. No receipt was taken upon this alleged delivery and no contract with regard to the storage of the trunk was proven. It was *held* that this evidence was clearly insufficient to prove a delivery for the purpose of charging warehouseman upon his failure to return the trunk upon plaintiff's demand. Testimony given by the plaintiff to the effect that an agent of the defendant had admitted nine months after the transaction that the trunk had been received was held improper, that such testimony formed no part of the *res gestæ* and that the objection to the reception of this testimony was well taken. *Strong* v. *Union Transfer & S. Co.*, 11 Misc. 430.

Bailment—Limitation of liability—When void:—Plaintiff deposited handbag with defendant for safe keeping at its parcel room and received a printed card board coupon containing among other recitals a limitation of liability for $10 for loss or damage. Plaintiff's attention was not called to this provision. *Held*, that the limitation was void. *Healy* v. *N. Y. C. & H. R. R. Co.*, 138 N. Y. S. 287.

Cannot deny bailor's title:—A warehouseman having received property from the plaintiff will not be permitted to defeat his

right to its return by attempting to interpose the claim of ownership in a third person. *Leoncini* v. *Post*, 37 St. Rep. 255; *Gruel* v. *Yetter*, 27 Misc. 494; *Mullins* v. *Chickering*, 110 N. Y. 514; *Transportation Co.* v. *Barber*, 56 N. Y. 547; *Wheeler* v. *Lawson*, 103 N. Y. 40; *Frost* v. *Mott*, 34 N. Y. 253.

Same—When true owner may maintain action for goods stored by his agent:—A commission merchant stored certain goods and guaranteed payment of the storage charges, the warehouseman being aware that the title thereto was in other persons. *Held* that the true owner of the goods was entitled to recover their value when the goods were destroyed by the fault or misconduct of the warehouseman. *O'Connor* v. *Moody*, 90 App. Div. 440.

Conversion—Wrongful sale for storage without notice to owner:—A warehouseman received goods for storage and three years afterwards sold the same, without notice to the bailor as required by ch. 336, Laws of 1879. *Held*, that the sale made under such conditions was a conversion of the goods for which the warehouseman was liable. *Todd* v. *Haeger*, 12 St. Rep. 633.

Same—Facts constituting:—Plaintiff's goods were taken by the marshal and placed with the defendant, who admitted receiving them. When plaintiff called to see them and wanted them he was told they were in another warehouse and could not be delivered just then. Plaintiff was also told they were there, to leave his name and address and defendant would communicate with him. No communication was received. Later, plaintiff recognized a part of the goods at an auctioneer's and when he reported the facts, was told it was not possible that they were his goods. Facts held to constitute a demand and an unreasonable delay sufficient to predicate an action for conversion. *Lissner* v. *Cohen*, 97 N. Y. S. 227.

Same—Refusal to deliver to true owner —Time for investigation as to ownership:—It has been held that before the refusal of a bailee to deliver goods in his possession to one who claims he is the true owner thereof, will amount to a conversion, that such bailee if he has any honest doubts as to the ownership of the property is entitled to a reasonable time in which to investigate. An unqualified refusal to deliver *held* to constitute a conversion. *Rogers* v. *Wier*, 34 N. Y. 463.

Same—Tender of charges must be proven:—In order to recover from a warehouseman in an action for conversion, it must appear that the plaintiff was ready and willing to pay the charges against the goods. In this case the claimant was not identified and did not afford the warehouseman "a reasonable time to ascertain the validity of the adverse claim." Judgment for plaintiff reversed and new trial ordered. *Zuber* v. *Mehrle,* 112 N. Y. S. 1093.

Warehouseman guarantor of advances—Entitled to subrogation:—Where a third party makes advances on goods stored with a warehouseman and the warehouseman guarantees the payment of such advances and finally pays the same, he is subrogated to all the rights of such third party in the goods. *Kilpatrick* v. *Dean et al.,* 3 N. Y. S. 60, aff'd 15 Daly, 182.

Same—Judgment for storage charges, not a bar to an action for conversion:—In an action against a warehouseman for conversion of certain wood stored with him, it was *held* that a judgment procured by the defendant against the plaintiff for storage charges was not a bar to this action, the record of the proceedings before the justice who tried the case not showing that the wood in question had been delivered to the owner. *Merritt* v. *Peirano,* 10 App. Div. 563.

Change of proprietorship of warehouse—Request upon depositor to withdraw his goods—Effect—Market rate of storage—Duty of warehouseman:—The defendant had stored a quantity of wood in a warehouse and had received therefor a receipt in which the rate of storage per month was stated, it being the market rate therefor. Subsequently the warehouse was taken possession of by the plaintiff, who assumed all outstanding contracts of storage. Thereafter, plaintiff notified the defendant that he must withdraw the wood from the warehouse or else pay a greatly advanced rate. Defendants refused to comply with this request and allowed the wood to remain in the warehouse, offering to pay the market rate for the storage thereof. In an action to sell the wood pursuant to its lien for unpaid storage, it was *held* that after the refusal of the defendant to remove the wood as requested, that this terminated the contract of storage but that the plaintiff would be entitled only to recover whatever the market rate for such storage might be shown to be at that time and not the exorbitant charge claimed by the plaintiff.

Further *held* that plaintiff was not bound to retain the property after the contract of storage was terminated by his notice but that he would have been justified in removing it after that date and depositing it in a warehouse at the risk and expense of the owners subject to any lien he might have prior to the removal. *Hazeltine et al.* v. *Weld et al.*, 73 N. Y. 156.

Same—Several liability—Holding in official capacity no defense:—The defendant took possession of and operated a warehouse in which the plaintiff's goods were stored, and during the term of such storage the goods were injured. It was *held* that he was severally liable to the owner of the goods although the warehouse company which had previously operated the warehouse was a defendant also. As the injury happened while he was in possession he was liable for the same. The defendant attempted to show that he was not liable on the ground that he held and conducted the warehouse in an official capacity. The plaintiff denied that she had any notice or knowledge of such representative capacity. It was *held* therefore that this defense could not be maintained. *Kaufman* v. *People's Cold Storage*, 10 Misc. 553; *Kaufman* v. *Morgan*, 10 Misc. 554.

Same—What sufficient to make prima facie case:—The defendant company took possession of a warehouse formerly operated by another firm and notified all the depositors that the customers would in no way be affected by the change in ownership. The plaintiff had deposited goods in the warehouse prior to this change, but upon receiving the goods from warehouseman found that they were damaged. In an action for the value thereof, it was *held* that the plaintiff made out a *prima facie* case against the defendant by showing delivery to the former owner and the damaged condition when received, and that it was error to dismiss the case upon this showing. *Isler et al.* v. *Linds Co.*, 67 N. Y. S. 1072; *Smith* v. *Railroad Co.*, 43 Barb. 225, aff'd 41 N. Y. 620.

Evidence—Demand—Burden of proof:—In an action against a warehouseman for failure to deliver the goods upon demand, it was *held* that the plaintiff made out a *prima facie* case by showing the delivery to the warehouseman and such failure to redeliver. The court *held* that the warehouseman is liable in such a case unless he can account for the loss of the goods by

showing that they were taken from his possession without any fault on his part. *Coleman* v. *Livingston*, 4 J. & S. 32; *Burnell* v. *N. Y. & C. R. R. Co.*, 45 N. Y. 184. But see *Claflin et al.* v. *Meyer*, 75 N. Y. 260.

C.

Safe deposit boxes—Property in subject to attachment:—The property of a debtor in a safe deposit box is simply deposited for safe keeping and the sheriff may enter the same to make a seizure required by law, in the execution of process in his hands. *United States* v. *Graff*, 67 Barb. 310.

Same—Contents of not "in possession or under control" of safe deposit company:—A safe deposit company rented a safe which was recorded on its books in the name of "Russell Sage or Charles W. Osborne" who were to severally have access to the same. Osborne's right of access was to be uninterrupted in the event of the death of Sage. After Sage's death Osborne's use of the safe continued as before and the company did nothing to prevent Osborne from removing the contents of the safe and it gave no notice of any kind to the State Comptroller. An action was brought by the Comptroller in the name of the people of the state against the safe deposit company to enforce the penalty of one thousand dollars as provided in the section 227 of the Tax Law as it stood on July 22, 1906. (Laws N. Y., 1905, Vol. I, Ch. 368) and prior to the amendment of 1908 (Laws N. Y., 1908, Vol. I, Ch. 310). A judgment was entered upon a verdict in favor of the defendant and the state appealed to the Appellate Division. In affirming such judgment that court held it was not necessary to resort to the rule of strict construction applicable in cases of penal statutes because here clearly the defendant did not have "in possession of under control" the contents of the safe in question and hence the section was not applicable and therefore imposed no duty upon the defendant; that defendant could not have obeyed the statute without invading the legal rights of its customer. The court further held that the status of the parties bore a close analogy to that arising from the relation which exists between the tenants of a general office building and the landlord thereof, who keeps within his control and under his care and protection, the common means of access to the building and to the suites of offices therein, but as to which, subject to any regulations that may have been established by the landlord, the

rights of the tenants are exclusive. *People of State of New York by Glynn, comptroller,* v. *Mercantile Safe Deposit Co.,* 143 N. Y. Supp. 849.

NOTE—A statute, the same as that under which this case was brought held to be constitutional in Illinois. National Safe Deposit Co. v. Stead, 250 Ill. 584. See also this volume, Illinois Decisions, page 202.

F.

Carrier—Continuing liability—Warehouseman liable in admiralty:—A steamship company having the right to use the pier, adjacent bulkheads, and a room in the warehouse of one B, placed therein certain rubber the company had transported. The room and wharf were under the care of B's servants. Between Saturday and Monday a considerable quantity of the goods disapeared and presumably were stolen. Under the terms of the bill of lading the company had the right, under certain conditions, to store the property for the account and risk of plaintiff.

Held: that the company had not stored the property for account of plaintiff and had done nothing to change or terminate its carrier's liability. Also held as B had undertaken for hire to watch and care for the room outside of business hours, that he was liable both to the carrier and to the owner. Libel retained against B under Admiralty Rule 59 on the ground that B was bound to indemnify any one liable in admiralty. *Evans* v. *N. Y. & P. S. S. Co.,* 163 Fed. 405.

Claim of title by a third person—Warehouseman not entitled to equitable relief—Interpleader:—The complainant, a warehouse company, filed a bill in equity alleging that various persons claimed title to a large quantity of arms stored with it and also that there were charges for storage due for which the complainant had its lien thereon. The bill prayed that all parties thereto be restrained from further proceedings and that they be compelled to interplead. The court *held* that the motion of the complainant for an injunction *pendente lite* must be denied on the ground that he had no right to maintain an action of interpleader as he must defend himself at law, the question at issue being one purely of the legal title to the property. *Bartlett et al.* v. *His Imperial Majesty, The Sultan, etc.,* 23 Fed. 257; *Crawshay* v. *Thornton,* 2 Mylne & C. 1.

Conversion—Asserting warehouseman's lien—Will not sustain charge of wilful injury to property:—In an action for conver-

sion, the complaint alleged that the defendant refused to deliver certain personal property, she claiming a warehouseman's lien thereon. *Held:* that the complaint did not charge wilful injury to property within the meaning of Code of Civil Procedure, sec. 556, and that she was not liable to arrest. Therefore upon her prevailing in the suit, the plaintiff was not liable to a body execution. *Allen* v. *Fromme*, 195 N. Y. 404.

Interpleader—Proper remedy—When:—Action for interpleader held to be proper remedy for warehouseman where he holds goods claimed by different parties. *Manhattan Storage & Warehouse Co.* v. *Benguiat Art Museum*, 139 N. Y. S. 1073 citing *Beebe* v. *Mead* 101 App. Div. 500.

G.

Government bonded warehouse—Effect of statute—Burden of proof:—In an action against a government bonded warehouseman for the value of certain cigars, alleged to have been lost while in his custody, it was contended on behalf of the defendant that the goods deposited with him were at the owner's risk under the terms of the Act of Congress pertaining to bonded warehousemen (10 U. S. Stat. at L. p. 270). It was *held* that the provision of this statute stating that the goods were held at the owner's risk applied only to the United States government and not to the warehouseman, it not being the intention of Congress to change thereby the liability of bonded warehousemen for the exercise of due and ordinary care. *Schwerin et al.* v. *McKie et al.*, 51 N. Y. 180.

Same—Statute requiring withdrawal within one year—Effect of such withdrawal when negotiable warehouse receipt outstanding—One taking receipt after the expiration of the year not a bona fide holder:—The defendants, who conducted a bonded warehouse, delivered to a depositor a negotiable receipt for a large quantity of whiskey which was stored therein. In the receipt it was stated that the whiskey was deliverable to the bearer only after the payment in cash of the short price, the government tax and storage charges. On the back of the receipt there was a copy of the statutes of Kentucky by which such receipts were made negotiable and transferable by indorsement in blank with the same liability attaching to the negotiation of bills of exchange. The defendants duly gave a bond as required by the Revised

Statutes of the United States conditioned that they would pay the tax on the whiskey as specified on the entry, before removal from the distillery warehouse and within one year from the date of the bond. A year thereafter the defendants shipped the whiskey to the depositor. It subsequently appeared that this depositor had indorsed the receipt after the expiration of the year to the plaintiff who brought an action for conversion against the defendant warehouseman. Upon the above stated facts, it was *held* that the warehouseman was not liable; that the plaintiff when he took the warehouse receipt was in a similar position to one who accepts a bill of exchange after maturity, that is, he took with all the equities; that the warehouseman had no right nor power under the Revised Statutes of the United States to hold the whiskey after the expiration of the year and that the plaintiff was chargeable with knowledge of this statute. An examination of the receipt would have shown the plaintiff that a year had expired since the issuance thereof and that, therefore, it could not then be lawfully in the warehouse of the defendant. *Van Schoonhoven* v. *Curley et al.*, 86 N. Y. 187.

Same — Representation on warehouse receipt that liquor in "free warehouse":—If a warehouse receipt state that the liquor represented thereby is stored in a "free warehouse" whereas in fact the government tax has not been paid, such warehouseman will be liable for the amount of such tax to an innocent holder of the receipt. *First Nat. Bank* v. *Dean et al.*, 137 N. Y. 110, aff'g *Same* v. *Same*, 16 N. Y. Supp. 107.

Same—Sureties on bond—Discharge by postponement of sale —Principal liable:—By the Revised Statutes of the United States (12 Stat. at L. p. 293) goods left in a United States government bonded warehouse are deemed to be abandoned after three years, if all taxes and penalties due thereon are not paid. The regulations of the Treasury Department provide that such goods shall be sold on a certain day after the expiration of said three years. Where the Secretary of the Treasury issued an order postponing such sale and afterward the United States brought an action against the sureties on the bond for the recovery of the deficit existing after the sale, it was *held* that by such postponement the sureties were relased. Such postponement of sale had precisely the same result as an extension of credit would have in a case of other sureties. A surety is entitled to have the sale take

place on the day specified in the Treasury regulations; a postponement thereof will increase the amount for which he is liable and for which he must look to his principle. With regard to the principal, the case is different. He is liable for the whole duties as importer without limitation of time and irrespective of the goods held as security. *United States v. De Visser*, 10 Fed. Rep. 642.

H.

Storage charges—Contract an entirety—Charges not earned until contract fully performed:—The plaintiff, a warehouseman, agreed with the defendant to store a number of barrels of wine for a definite period of time for a stipulated price per barrel. Prior to the expiration of such time, and while the plaintiff still had a large number of the barrels in his possession, the warehouse and contents were destroyed by fire without negligence or fault on his part. In an action for the storage charges, it was *held* that the plaintiff could not recover because the contract was an entirety; and as he had not fully performed the same he was not entitled to any part of his storage charges. It appeared from the evidence that the defendant had paid a certain sum in cash on account of such storage charges at the time the agreement was made. It was *held* that although the defendant in his answer did not claim the return of this sum that, nevertheless, the plaintiff was not entitled to retain the same. *Archer* v. *McDonald et al.*, 36 Hun. 194.

Same — Parol evidence:—A warehouse company offered to issue storage warrants for a period of five years at a specific rate, which proposal plaintiff accepted. *Held:* that the contract on its face was valid for five years; that any doubt as to the intention of the parties ought to be settled by parol evidence. *Robinson* v. *American Linseed Co.*, 147 Fed. 885.

Same—No implication to reduce storage charges on account of insurance—Custom:—The plaintiffs, warehousemen, sued the defendant for storage charges due on account of sugar stored. The defendant admitted the storage and the rate thereof and set up an implied agreement, based upon custom, by which he claimed a set-off against such charges on account of sums paid by him for insurance. The defendant alleged that it was a custom in that vicinity to allow to depositors, in reduction to their storage charges, a certain sum for insurance when the

goods were stored in a warehouse in which goods of a fibrous nature were stored. It was *held* that the defendant had failed to establish any legal right to the counterclaim as alleged. *Woodruff et al.* v. *Acosta*, 11 St. Rep. 286.

Same—When detained by Government under Pure Food Act: —Where merchandise is detained for examination under the Pure Food Act, the charge for storage should be borne by the Government. *U. S.* v. *Acker, M & C.*, 133 Fed. 842.

Advances by warehouseman to depositor—Usury—Intent a question for the jury:—It appeared that the plaintiffs, who were warehousemen, loaned money to the defendant who had deposited goods with them and secured the payment of the notes given therefor by the warehouse receipts. The warehouseman agreed to procure the money from another source by the use of his name, it being further agreed that he was to receive compensation for these services. It was *held* that although the facts showed that the plaintiffs' compensation amounted to a usurious rate of interest that, nevertheless, he was entitled to compensation for his services in procuring the money for the defendant although it appeared that the money advanced was in reality money belonging to the plaintiff himself; and further *held,* that it was a question of fact for the jury to determine whether this form of transaction was gone through with for the purpose of covering a usurious transaction. *Linds et al.* v. *Grant,* 37 St. Rep. 60.

Same—Action for freight—Custom—Apparent good order:— By the custom of warehousemen, known and established, they have the right to receive goods from a carrier, if in apparent good order, and advance to the latter his reasonable charges for the carriage of them, and to hold them subject to the lien of the carrier for the amount thus advanced; and if delivered to the owner without immediate payment, at the owner's request, a suit may be maintained to recover the amount advanced to the carrier, and if the goods have been injured by the carrier, which injury is not apparent or known to the warehouseman, before or at the time of his receiving the goods, the owner must look to the carrier for his damages, and cannot *recoupe* the same in an action by the warehouseman. *Sage et al.* v. *Gittner et al.*, 11 Barb. 120; *Western Transportation Co.* v. *Barber,* 56 N. Y. 544.

Sale for storage charges—Agreement:—The right given to warehouseman (Laws, 1883, ch. 421) to sell goods for storage charges when one year's storage is due, may be altered by special agreement between the parties. *State Trust Co.* v. *Casino Co.*, 5 App. Div. 381.

Same—Notice cannot be waived by provision in the receipt:—The warehouse receipt delivered to plaintiff contained the provision "if at any time there shall be due and unpaid the storage fees for twelve months, then the proprietor of the storage rooms is authorized and empowered to sell at public auction a sufficient amount of the goods to pay the storage due at that time, without further notice." Defendant advertised the goods for sale for one week in one newspaper and personally gave plaintiff notice verbally. *Held,* that the statute prescribes a certain method of procedure to be followed by a warehouseman in enforcing his lien by sale, and he cannot be relieved from the requirements of the statute by an arbitrary insertion in the warehouse receipt of a waiver of notice on the part of the owner. *Sand v. Rosenagel,* 83 N. Y. S. 255.

Lien—Given only to warehousemen:—The lien of a warehouseman for his charges is governed by ch. 526 of the Laws of 1885 (see also ch. 418, Laws of 1897) by the terms of which act, in order to be entitled to a lien, a person must be engaged regularly in the business of storing goods, wares and merchandise for hire. A person not so engaged does not come within the terms of the statute. *Merritt* v. *Peirano,* 10 App. Div. 563; *In re Kelly,* 18 Fed. Rep. 528.

Same—Storage by stranger:—An owner employed K, a supposed warehouseman, to cart and store her goods at an agreed price. Instead, K stored the goods with defendant. Plaintiff offered to pay defendant the price agreed to be paid K but it demanded higher charges. *Held:* that defendant acquired no lien on the goods and judgment for plaintiff was affirmed. *Farrell* v. *Harlem Terminal Storage Warehouse Co.,* 127 N. Y. S. 306.

Same—Right to—Casual bailee—Conversion:—No lien insures upon stored goods in favor of a casual bailee. The right to a lien is limited to warehousemen. A *prima facie* case of conversion is made out by a refusal to deliver, for although the defendant was entitled to a reasonable charge for the storage he had

no right to refuse to return the property until that charge was paid. *Alton* v. *N. Y. Taxicab Co.*, 121 N. Y. S. 271.

Same—Must sell goods within a reasonable time after expiration of the year:—After there has been a default in the payment of storage charges and one year has elapsed, a warehouseman must sell the goods for such charges within a reasonble time. He has no right to keep the goods for an indefinite period, allowing his charges to increase. Although the statute is not mandatory and does not require the warehouseman absolutely to sell at the expiration of the year, nevertheless the rights and duties of the contracting parties are fixed by fundamental principles of law which do not depend upon the statute. Therefore, a warehouseman cannot unreasonably neglect to avail himself of his rights of sale after the same has accrued. *Morgan* v. *Murtha*, 18 Misc. 438, reversing *Same* v. *Same*, 17 Misc. 292.

Same—Right to retain undelivered portion of goods for storage due on entire lot:—A warehouseman has a lien upon goods remaining in store, which are part of a large quantity of goods originally stored, for the storage charges due upon all of the goods. *Schmidt & Webb* v. *Blood & Green*, 9 Wend. 268.

Same—General and not specific—May hold goods for all legal demands for storage against the owner—Sec. 1 ch. 526, Laws of 1885, construed:—By sec. 1, ch. 526, of the Laws of 1885, it is provided that a warehouseman or person lawfully engaged in the business of storing property for hire shall have a lien thereon for his storage charges and for moneys advanced by him for cartage, labor, weighing and coopering paid on goods deposited and stored with him, the statute extends such lien to all legal demands for the above which he may have against the *owner* thereof. It was *held* that the warehouseman has a general lien on any and all goods which he may have in his possession for any and all legal charges which he may have against the owner of such goods for storage or for money advanced for the purposes specified in the statute. *Stallman & Fulton* v. *Kimberly & Johnson*, 53 Hun, 531, aff'd 121 N. Y. 393, this case followed in *Kaufman* v. *Leonard et al.*, 139 Mich. 104; *Baumann* v. *Post*, 26 Abb. N. C. 134. See note on liens and the effect of the act in 23 Abb. N. C. 245.

Same—Warehouseman's lien subordinate to rights of mortgagee under chattel mortgage:—Where one mortgaged his furniture,

the mortgage having been duly recorded as required by statute, and had made default in the payment thereof, and, further had removed the furniture and stored the same contrary to the terms of the mortgage, it was *held*, in an action by the mortgagee against the warehouseman, that the lien of the former was superior to that of the latter. It was contended in behalf of the warehouseman that by sec. 1, ch. 526, of the Laws of 1885, warehousemen were given a specific lien upon goods stored with them. The court stated that it was true that a specific lien was given by the act and that a general lien was also given thereby, but that there was nothing in the statute which was intended to give a warehouseman a lien upon goods belonging to another, stored by a stranger in fraud of the true owner's rights. *Baumann* v. *Post*, 26 Abb. N. C. 134; *Eisler* v. *Union Transfer and Storage Co.*, 16 Daly, 456; *Baumann* v. *Jefferson*, 4 Misc. 147; *Banfield* v. *Haeger*, 13 J. & S. 428; *Ludwig, Baumann & Co.* v. *Roth*, 123 N. Y. S. 191.

Same—When warehouseman's lien superior to rights of mortgagee under chattel mortgage:—Where the mortgagee under a chattel mortgage had failed to refile the mortgage within thirty days prior to the expiration of the first year, and the goods were stored with a warehouseman, it was *held* that the lien of the latter for his storage charges was superior to that of the mortgagee. *State T. Co.* v. *Casino Co. et al.*, 5 App. Div. 381.

Same—Same—Chattel mortgage must be filed within thirty days before expiration of year:—Where a warehouseman held goods on storage which had been mortgaged and the mortgage had been recorded forty-eight (48) days before expiration of the year and not within *thirty* (30) days, as required by the statute, it was *held* that such refiling was absolutely nugatory and that the lien of the warehouseman for his storage charges was superior to that of the mortgagee, and that the goods could be sold by the former for such charges. *Industrial Loan Association* v. *Saul*, 34 Misc. 188.

Same—Purchaser taking with notice thereof:—A warehouseman, having in his possession a large quantiy of oil upon which he had made advances, was instructed by the general owner to deliver the same to a purchaser thereof. The warehouseman was to receive the payment from the purchaser out of which he was

to first pay all of his advances. The purchaser received and paid for part of the goods and when the balance was sent to him stated that as the general owner was indebted to him, he had paid himself out of the price of the goods and held the balance subject to the order of the warehouseman. In an action to recover the full price of the goods, it was *held* that the warehouseman was entitled thereto; that the purchaser took with constructive if not actual notice of his lien for advances and charges and that he was bound to pay the same. *Carrington et al.* v. *Ward et al.*, 71 N. Y. 360.

Storage contract—Conditions not stated when goods received: —Where goods are delivered to a common carrier and warehouseman and no receipt given at the time of their delivery, a receipt containing limitations of the defendant's liability four or five weeks afterwards sent to the plaintiff, *held* not to constitute the contract between the parties as of the time of the delivery of the goods. *Belzer* v. *Daub Storage Warehouse and Van Co.*, 130 N. Y. S. 153.

Lien—Storage charges—Time accruing:—A warehouseman having a lien for storage earned, is entitled to hold the property until his claim is paid, and for the time it is held, is entitled to be paid reasonble storage down to the date of the final trial of the litigation involving the same. *Reidenbach* v. *Tuch,* 88 N. Y. S. 366.

I.

Commingling of goods—Valid sale of a part thereof without segregation:—A party, owning a large quantity of grain which was stored in mass in his warehouse, sold a portion thereof and gave to the purchaser his warehouse receipt acknowledging that he held, subject to the order of the vendee, the number of bushels of grain purchased. The vendor owned other grain in the warehouse with which the grain sold was mingled and there was no separation made at the time of the sale nor was it intended by the parties that any such separation should be made. It was *held* that this was a valid sale of the grain represented by such receipt. *Kimberly et al.* v. *Patchin,* 19 N. Y. 330. See also *Gardiner* v. *Suydam,* 7 N. Y. 357.

Same—Contract an executory one—Above case distinguished: —The defendants, having a large quantity of oil in their ware-

house, agreed with the plaintiff for the sale thereof and delivered to him a bill of sale in which it was stated that they had received payment therefor by a note at three months. The bill also stated that the oil was to be delivered when called for, subject to his charge for storage, and the quality of the oil to be like a sample which was then delivered. The plaintiffs paid the note when it became due and subsequently demanded the oil which when offered proved to be of an inferior quality and twelve hundred gallons less than the amount called for. It appeared that the loss was due to leakage and that the deterioration in quality was due to the same cause. There was no separation of the oil from that of a large quantity stored nor was there any request for such separation. It was contended in behalf of the defendant that the doctrine of the case of *Kimberly et al.* v. *Patchin,* 19 N. Y. 330, applied; that the contract was one of sale; that the plaintiff was liable for the deterioration and loss after the title had vested in him. It was *held* that the present case was distinguished from *Kimberly* v. *Patchin,* in that there was a delivery of a receipt in the latter case, in lieu of a manual delivery of the grain, and that there was no such attempt in the present case to constitute the defendant bailee for the plaintiff. *Foote et al.* v. *Marsh et al.,* 51 N. Y. 288.

Substitution of other property—A contract for such substitution held not contrary to any statute of this state:—The owner of certain bales of burlap stored the same with a warehouseman and took negotiable receipts therefor. At the time he requested that the warehouseman refrain from placing on the receipts any identification marks for the reason that he would subsequently desire to substitute other bales of burlap for those then deposited. In an action brought by the pledgee of the receipts against the owner of the burlap, it was *held* that the agreement providing for the substitution of other burlap for that originally deposited was a valid one, that no statute was violated thereby and that there was no apparent reason for deeming it against public policy for a warehouseman to make such an agreement for the substitution of goods. *New York Security and Trust Co.* v. *Lipman,* 91 Hun, 554.

K.

Replevined goods—Defense—Elements of:—When sued for their value for failure to return goods deposited with him, it is

not a sufficient defense for the warehouseman to show that they were replevined by the marshal, and not also show that the seizure was under valid legal process, when made, or that plaintiff was apprised of the replevin of the goods. *Glass* v. *Hauser*, 78 N. Y. S. 830.

Same—Excuse for non-delivery—Efforts to notify owner:—A bailee for reward may excuse himself for a failure to deliver the property to the bailor by showing that the property was taken from his custody or control under authority of valid legal process and that within a reasonable time he gave notice of the fact to the owner. Evidence considered and *held* that defendant, who stored goods in the name of E. G——, with no address, who was named in the pleading as Ezrael G—— and Israel G——, whose correct name as amended in the pleadings was Harris G——, by notifying plaintiff's brother and trying to find plaintiff's name in the directory, had done all that reasonably could be expected of him to inform plaintiff. *Glass* v. *Hauser*, 83 N. Y. S. 177.

L.

Replevin—Improper delivery to defendant in replevin suit—Warehouseman liable for:—A warehouse company, pursuant to an order obtained under ch. 633 of the Laws of 1895, delivered to the sheriff property which had been formerly stored with it by the defendant in an action of replevin. It appeared that prior to the service of the order on the warehouseman that it had issued a receipt to a third party as the owner of the goods in accordance with an order of the defendant. It was *held* that the delivery to the sheriff of the goods under such circumstances attempted to deprive such third party of his property without due process of law; that the warehouse company was liable to such third party for this wrongful delivery for it was its duty to have notified him of this order so that he might protect the goods himself. The order in the case was for the delivery to the sheriff of any property *belonging to the defendant* and if the warehouseman had at the time no property belonging to such defendant the order became a nullity and might safely have been disregarded. *Whitman et al.* v. *Kleinmann et al.*, 24 Misc. 554.

M.

Pledge—Unauthorized sale by pledgee, conversion:—Where a pledgee of property sells the same without the authority of the

pledgor, such sale constitutes a conversion and the transaction operates as a payment of the debt to the extent of the value of the property. If such value exceeds the debt the pledgees are liable for the market value of the property converted, less the amount of the debt. *Kilpatrick* v. *Dean et al.*, 3 N. Y. Supp. 60, aff'd 4 N. Y. Supp. 708.

Same—Property set apart and tagged:—Certain specific property pledged to secure an existing debt was set apart, conspicuously marked and tagged as belonging to claimant, who exercised exclusive dominion and control over it and had free access to it. *Held* to be a valid pledge. *American Can Co.* v. *Erie Preserving Co.*, 171 Fed. 540. Affirmed, 183 Fed. 96.

Same—Delivery essential:—A warehousing company leased three warehouses of a preserving company situated at its factory. The superintendent of the preserving company was the custodian of the warehouses but endorsed his salary checks over to the preserving company retaining no compensation as custodian. The superintendent issued warehouse receipts covering the stored property and made weekly reports. The receipts were pledged as security for loans. *Held* that there was not a sufficient delivery of the property by the receipts and that the holders thereof acquired no rights over the general creditors. *Id.*

Same—A factor may pledge:—By the Factor's Act of this state, a factor in possession of the goods and having the necessary muniments of title may pledge the same as validly as the owner thereof. *Brooks v. Hanover Nat. Bank*, 26 Fed. Rep. 301.

Injury to goods—Liability for when goods subsequently destroyed:—A warehouseman is liable for the negligent injury of goods stored with him for hire, though it appear that after the happening of the injury, the goods were destroyed without his fault, and that they must have been so destroyed even if no damage had previously occurred. *Powers* v. *Mitchell*, 3 Hill 545.

Same—Duty as to safe building:—A warehouseman in the exercise of reasonable care owes a duty to make reasonable inspections from time to time to see that the building remains safe and in proper condition, and is liable for grain destroyed by reason of negligence in the collapse of the warehouse. *Buffalo Grain Co.* v. *Sowerby*, 195 N. Y. 355.

Loss by fire—Negligence must be proven—Burden of proof always on plaintiff:—Where an action is brought against a warehouseman for the value of grain stored with him, and the defendant shows that the destruction of the goods was caused by fire, the burden of proof remains upon the plaintiff to show that the fire was caused by the negligence of the defendant. While it is true that a demand upon a warehouseman for goods stored with him met by an unexplained refusal constitutes a *prima facie* case of conversion against him, this rule does not apply where the warehouseman alleges that the goods were destroyed by fire, for if the fire was not due to his negligence or fault he is not liable for the loss resulting therefrom and the plaintiff having alleged negligence in his complaint is bound to prove the same. *Liberty Ins. Co.* v. *Central Vt. R. R. Co. et al.*, 19 App. Div. 509; *Claflin* v. *Meyer*, 75 N. Y. 260; *Lamb* v. *Camden & Amboy R. R. & T. Co.*, 46 N. Y. 271; *Grieve* v. *N. Y. C. & H. R. R. R. Co.*, 25 App. Div. 518.

Same—Storage in different place—Proximate cause—Warehouseman liable:—It was agreed that plaintiff's goods should be stored in a certain room in the building of defendant warehouseman and plaintiff delivered the property for storage therein. Defendant was liable as the failure to store in the place agreed upon was the proximate cause of the loss. *Mortimer* v. *Otto*, 206 N. Y. 89.

Same—Negligence question for the jury:—A common carrier was sued for the destruction of property which he held in the capacity of warehouseman. It appeared that the building in which the property was stored was destroyed by fire, and in spite of the fact that the plaintiff offered testimony to prove negligence on the part of the defendant, the trial court granted a nonsuit. The evidence as to the negligence of the defendant was as follows: It appeared that the defendant had an office in one corner of the building which was used as a warehouse and that in such office there was a small stove; that the woodwork in close proximity to the stove was charred and that on a previous occasion the office had caught fire from a live coal which had dropped out of the stove. Further, that an employee of the defendant had requested his superior to have a new stove placed in the office, stating that the stove there was dangerous and that this request had not been complied with, and finally that the fire originated

in the office near the stove. It was *held*, on appeal that these facts should have gone to the jury to determine whether or not the defendant was guilty of negligence. *Grieve* v. *N. Y. C. & H. R. R. R. Co.*, 25 App. Div. 518.

Loss by theft—Watching entrance to warehouse—Precautions—Questions for the jury:—In an action against a warehouseman, for the loss of a large quantity of cigars, the defendant alleged that the cigars had been stolen from him without his fault and offered testimony to show that he used due care in properly watching the entrances to his warehouse in the day-time, and in having them securely fastened at night. The plaintiff offered testimony to the effect that two witnesses had gone into the warehouse during the day-time without being detected by the defendant or his employees. Upon motion of the defendant a verdict was given for him. On apeal a new trial was ordered on the ground that the plaintiff had a right to go to the jury for their verdict on the question as to whether or not the guard maintained by the defendant was sufficient. *Madan* v. *Covert et al.*, 10 J. & S. 135.

Same—Negligence—Burden of proof:—A warehouseman is not responsible for goods intrusted to him, stolen or embezzled by his storekeeper or servant, unless negligence be shown; and the onus of showing negligence lies upon the owner. *Schmidt* v. *Blood*, 9 Wend. 268; *Claflin* v. *Meyer*, 75 N. Y. 260, rev'g *Same* v. *Same*, 11 J. & S. 1; *Grossman* v. *Fargo*, 6 Hun. 310; *Weed* v. *Barney*, 45 N. Y. 344; *Draper* v. *Del. & Hud. Canal Co.*, 118 N. Y. 118.

Negligence—A question of fact—Presumption from nature of transaction:—In an action against a warehouseman, for the recovery of the value of goods deposited with him, the defendant attempted to excuse his non-delivery by showing that the goods were destroyed in the collapse of his warehouse while the same was being repaired after a fire. It was *held* that, generally speaking, the burden of proof was on the plaintiff to show negligence on the part of the defendant but that there are some instances where an accident is shown that negligence will be presumed from the nature of the accident. That loss may result from fires and thefts and the warehouseman be free from all negligence but in absence of earthquake or other act of God, the

collapse of a warehouse presupposes negligence for which the defendant will be liable. *Kaiser* v. *Latimer,* 40 App. Div. 149.

Same—Failure to deliver—Prima facie case:—Among the goods returned to the owner which had been stored, were certain barrels and cases substituted for the owner's goods. The owner notified the warehouseman of the substitution and he refused to make good the loss. *Held,* where the agreement of storage and the receipt of goods has been admitted, and evidence adduced to support failure to deliver, a *prima facie* case of negligence is made out. *Toplitz* v. *Timmins,* 88 N. Y. S. 946.

Same—Burden of proof on plaintiff throughout:—In an action against a warehouseman for failure to deliver on demand property intrusted to him, it was *held* to be well settled that the burden of proof rests on the plaintiff throughout the entire case. It is true that when the plaintiff has made out a *prima facie* case by proving the contract of storage, the receipt of the goods and failure to deliver that the warehouseman is liable unless he can show that the damage resulted from acts on his part which were in no wise negligent and for which he was not responsible. The plaintiff, thereupon, must resume his proof and the burden of establishing, by a preponderance of evidence, that the defendant has been negligent. *Mautner et al.* v. *Terminal Warehouse Co.,* 25 Misc. 729; *Liberty Ins. Co.* v. *Central Vt. R. R. Co. et al.,* 19 App. Div 509; *Claflin* v. *Meyer,* 75 N. Y. 260; *Schmidt & Webb* v. *Blood & Green,* 9 Wend. 260.

Same—What the defendant must prove:—In the case of failure on the part of a warehouseman to deliver upon demand goods intrusted to him, it was *held* that the burden of proof was upon him to establish that he was without fault after demand and refusal and that he was bound to show that he exercised ordinary care in keeping and preserving the property until called for. *Bank of Oswego* v. *Doyle et al.,* 91 N. Y. 32, citing *Schwerin* v. *McKie,* 5 Robt. 404, aff'd 51 N. Y. 180; *Burnell* v. *N. Y. C. R. R. Co.,* 45 N. Y. 184; *Ballston Refrigerating Storage Co.* v. *Eastern States Refrigerating Co.,* 142 App. Div. 135.

Same—Same—Defendant must give some account of property:—A defendant, liable as a warehouseman, must give some account of the property instrusted to his care, which he fails to deliver

on demand, before he can cast upon the plaintiff the burden of proving him negligent. *Bush* v. *Miller*, 13 Barb. 481.

Same—Misdelivery—Conversion:—An action of trover was brought against a warehouseman for his failure to deliver property intrusted to him, on demand of the owner. The case was tried and submitted to the jury upon the assumption that the property had been taken from the possession of the defendant by some person other than the owner. The jury found that the property had been *delivered* to such person by the mistake or negligence of the defendant; that is, by his act, not by his mere omission. It was *held* that this constituted a conversion of the property for which the defendant was liable. *Williard* v. *Bridge*, 4 Barb. 361; *Pashinska* v. *Selt*, 20 Misc. 665.

Same—Delivery to husband of wife's goods:—Plaintiff and her husband were living together and from their house there was delivered to defendant certain household goods, which, upon demand of the husband, were delivered to him. An action was brought by the wife for their value, she claiming to be the owner. *Held:* when household goods are taken for storage from a house where a man and his wife are living together, at the request of the husband, and are subsequently delivered to him, clear and convincing proof is required to sustain a verdict in favor of the wife against the bailee. Judgment reversed and new trial ordered. *Oakes* v. *Sloane*, 120 N. Y. S. 626.

Same—Delivery—Effect of owner's order—Warehouseman not liable:—Plaintiff stored with a warehouseman certain goods and received a warehouse receipt marked "non-negotiable" and requiring its presentation with a written order when any goods were to be withdrawn. Plaintiff delivered the warehouse receipt as collateral security for a loan, signing a receipt for the money received. The money lender, it is claimed, inserted in this receipt an order to deliver the goods to him. Upon presentation of this order with the warehouse receipt, the warehouseman delivered the goods to the money lender. In an action by the owner against the warehouseman for the value of the goods: *Held*, that the entire receipt for the money and order to deliver the goods being in the same handwriting, defendant was justified in acting upon the order and delivering the goods. That any fraud perpetrated was by negligence of plaintiff and ought to be borne by her instead of an innocent third party who relied upon her order.

Also held, that the legal effect of the transaction was to pledge the property as security, and that even though an order had not been given for their delivery it does not follow that the plaintiff was entitled to recover. While bailee may not ordinarily set up the rights of a third person against his bailor when sued for conversion, the right of a third person to whom the bailee has delivered the property may be considered as a defense. *Kramer* v. *Haeger Storage Warehouse Co.,* 108 N. Y. S. 1.

Same—Same—Liability:—Warehousemen are not only liable for losses occasioned by their negligence but also for those which arise from innocent mistakes in the delivery of goods to persons not entitled to receive them. *Bank of Oswego* v. *Doyle et al.,* 91 N. Y. 32.

Same—Failure to deliver—Presumption of:—A presumption of negligence on the part of a warehouseman arises upon the non-delivery of goods to the owner on his demand, and the warehouseman is then called upon to account for his failure to deliver. This duty to account for failure to deliver to the owner does not shift the burden of proof. The jury should be instructed as to the nature of the explanation the defendant is called upon to give to meet the *prima facie* showing of negligence. *Herrman* v. *New England Navigation Co.,* 128 N. Y. S. 380.

Cold Storage—Fruit ruined by temperature becoming too low—Not entitled to storage charges—Liability for damages:—The plaintiff, a warehouse company, brought an action for storage charges against the defendant who had stored a quantity of fruit in the former's cold storage rooms. The defendant counterclaimed, alleging and proving that the fruit was damaged and rendered useless while being kept at too low a temperature and judgment was rendered for the defendant in amount of his damages. On appeal this judgment was affirmed, the court holding that it appeared clearly from the testimony that the plaintiff was to store the fruit at a temperature ranging from thirty-five to forty degrees and that by his failure to do this he became liable to the defendant in damages which the latter had sustained by reason of this breach of contract. *Greenwich Warehouse Co.* v. *Maxfield,* 8 Misc. 308.

Same—Temperature too high—Warehouseman liable:—Plaintiff stored a quantity of apples with defendant warehouseman,

which were found to be damaged when removed. The findings of fact showed that the necessary uniform temperature was from 31° to 32° F.; that defendant permitted the temperature to arise to, and for periods to continue at 34° to 36° F., and on one occasion to 38°. *Held:* that defendant was liable, as it failed to show that the injury to the fruit did not happen in consequence of its failure to exercise due care. *Ballston Refrigerating and Storage Co.* v. *Eastern States Refrig. Co.,* 126 N. Y. S. 857.

Same—Duty to maintain temperature:—The defendant maintained a cold storage warehouse for the preservation of eggs and other perishable property, and plaintiff, without an express contract, stored a quantity of eggs with it. Plaintiff had access to and inspected the eggs from time to time. By reason of the ice melting in the adjoining compartment the temperature rose and a quantity of the eggs were spoiled. *Held,* that defendant impliedly undertook to maintain the necessary temperature required for the preservation of such property as should be stored by its customers. That defendant should have supplied more ice, or if this was impracticable, to have given plaintiff timely notice to remove his property before damage by deterioration. There being no express contract as to the time the property was to remain, the contract was a continuing one until terminated by one of the parties. *Sutherland* v. *Albany Cold Storage and Warehouse Co.,* 171 N. Y. 269, reversing 55 App. Div. 212.

Same—Meaning of term defined:—The phrase "cold storage" used in a warehouse receipt is indefinite and ambiguous in its meaning where the receipt simply states that the goods are to be kept in "cold storage." Where, therefore, the degree of temperature at which the goods were to be kept was of highest importance in the matter of their preservation, evidence would be received to show that this term meant below freezing, or, that it may have meant a temperature cold enough to preserve the goods. *Behrman* v. *Linde,* 47 Hun, 530.

Delivery—Evidence:—A truckman hired to cart and move certain goods testified that he packed a part into eleven barrels, and took all the goods to defendant's warehouse, delivered them, and drove away the empty wagon. Defendant's agent admitted that all plaintiff's goods delivered by the truckman had been

placed in the receiving room and that he saw the truckman bring the goods in. Plaintiff saw the wagon driven to the warehouse and janitor's wife testified that all plaintiff's goods were removed. *Held:* That preponderence of evidence showed a delivery of the goods and failure to return. *Wheeler* v. *Blumenthal*, 107 N. Y. S. 57.

Evidence—Receivable to show special value of lost property:—In an action against a warehouseman for damages for the loss of certain sheet music stored with him, it was *held* that evidence showing a special value of the sheet music to the plaintiff, in that it contained notes thereon made by her husband, was properly received. *Leoncini* v. *Post*, 37 St. Rep. 255.

Same—Theft—Evidence of negligence:—Action for value of goods stored with warehouseman. The warehouseman did not employ an inside watchman or maintain a burglar alarm, but employed a night watchman in common with other merchants. Burglars secured an entrance by climbing from an adjoining building and forcing the door to an elevator shaft. *Held:* that the evidence failed to show that defendant omitted any precaution which may be reasonably said to have furnished the occasion or opportunity for the burglary. Judgment reversed and new trial. *Batelle* v. *Mercantile Warehouse Co.*, 124 N. Y. S. 135.

Same—Injury to goods—Condition of goods and cost of repairs:—In a suit against a warehouseman for injury to a piano player shipped in his care, from Chicago to New York at the direction of plaintiff, *held* to be essential to recovery to show the condition of the instrument at the time it was shipped or came into defendant's possession. Also *held*, improper to admit expert evidence of the cost of putting the instrument in first class condition, in the absence of proof that it was in such condition when delivered to railroad company in Chicago and actually or presumptively in such condition when delivered to defendant. *Finsilver* v. *Manhattan Storage and Warehouse Co.*, 129 N. Y. S. 401.

Same—Instructions to jury—Where alleged to be stolen, the loss by such theft must be established:—The defendants, who were liable as warehousemen, had a large quantity of cigars stored with them, and upon failure to deliver upon demand, the plaintiff instituted suit against them. The defendant attempted

to show that the cigars in question had been stolen from him without his fault. The court instructed the jury that the defendant must prove that the loss was immediately connected with the theft, and, further, that in spite of such theft he had exercised ordinary care, or that the loss occurred without negligence on the part of the defendant. *Schwerin et al.* v. *McKie et al.*, 51 N. Y. 180; *Claflin et al.* v. *Meyer*, 75 N. Y. 260, rev'g *Same* v. *Same*, 11 J. & S. 1; *Madan* v. *Covert et al.*, 10 J. & S. 135; *Williamson* v. *N. Y., N. H. & H. Ry. Co.*, 22 St. Rep. 431; *Leoncini* v. *Post*, 37 St. Rep. 255; *Lichenstein* v. *Jarvis*, 31 App. Div. 33; *Abecasis* v. *Gray*, 11 J. & S. 573; *Oderkirk* v. *Fargo*, 61 Hun. 418; *Liberty Ins. Co.* v. *Central Vt. R. R. Co.*, 19 App. Div. 509.

Same—Written receipt for goods as in good condition not conclusive—A written receipt given for goods as in good condition does not preclude the owner from maintaining an action for injury to the goods, if he can explain the circumstances under which the receipt was given not necessarily inconsistent with the existence of the claim. *Comerford* v. *Smith*, 81 N. Y. S. 610.

Pleading—Bill of particulars:—In action for conversion of goods sold for nonpayment of charges, *held:* that if plaintiff claimed an agreement that defendant would not sell the property, that defendant was entitled to a bill of particulars setting forth the nature and character of the agreement, when and where made, whether oral or in writing, and the name or names of persons present. *Taylor* v. *Metropolitan Fireproof Storage Warehouse Co.*, 125 N. Y. S. 137.

O.

Measure of damages:—Where a warehouseman converts to his own use the property intrusted to his care by an unauthorized sale of the same, the measure of damages is the value of the property at the time of its conversion less any sum which may be properly due the warehouseman for charges or advances. *Kirkpatrick* v. *Dean et al.*, 3 N. Y. Supp. 60, aff'd 15 Daly, 182.

Same—Lost goods found after demand:—In the absence of a special plea, where the goods are finally delivered, the measure of damage is the difference in their value at the time and place the goods ought to have been delivered and at the time of their actual delivery. On plaintiff's testimony that the value of the

goods at the day of the trial was the same as when they were shipped, judgment at the most should be for interest and costs. Failure to deliver on the day of demand does not make a warehouseman a purchaser of the goods. When goods are found before trial the defendant is entitled to credit for the property recovered. *Porter* v. *Duval Co.*, 111 N. Y. S. 825.

Same—Interest allowable from date of demand:—A warehouseman had failed to deliver to his depositor certain cigars stored with him upon demand being made therefor. In the trial of the action, the warehouseman was found to be liable for their loss. In regard to the claim of the plaintiff for interest on the value of the goods from the date of demand, the court said: "The cigars in question were the property of the plaintiffs, and when they demanded them they were entitled to one of three things: To the goods, the pay for them, or a valid excuse for not delivering them. The defendants having failed to do either; and having thus occasioned the plaintiffs the loss of interest upon the value of their property without a valid excuse, they cannot justly complain of being charged with interest." *Schwerin et al.* v. *McKie et al.*, 51 N. Y. 180.

Same—Value of damaged goods:—In an action against a warehouseman for damage to crockery while in the van, it was *held* error to allow the plaintiff the original cost of $55 for a bisque figure, when the evidence showed that if restored (the pieces having been saved) would be worth $8 to $10. Also *held* error to allow $40 for a dinner set costing $55 when five or six pieces were broken, in the absence of evidence showing whether the broken pieces were important or insignificant; to what extent, if any, their broken condition depreciated the rest of the set; the market value of the pieces broken; the cost to replace them; or the difference in the value of the entire set before and after the accident. *Comerford* v. *Smith*, 81 N. Y. S. 610.

Same—Purchase price does not always govern:—In ascertaining the amount of damages resulting from the loss of goods stored with a bailee, the purchase price is not always a criterion of the value thereof. There may be circumstances which would render such criterion manifestly unfair, hence other evidence will be received. *Jones* v. *Morgan*, 24 Hun. 372; aff'd 90 N. Y. 4; *Leoncini* v. *Post*, 37 St. Rep. 255.

Same—Same—Market value—Cost:—In an action against a warehouseman for conversion of wine the plaintiff may recover the market value of the goods in the form stored and not the value after the payment of duty, bottling, labeling and packing. While the evidence of the cost of the goods is not conclusive as against plaintiff, it is some evidence of the value. *Palestine Hebrew Wine Co.* v. *Terminal Warehouse Co.*, 123 N. Y. S. 346.

P.

Insurance—Obtained by warehouseman—Proportion recoverable:—Plaintiff deposited his goods with defendant with the assurance of the latter that they would be covered by general policies of insurance while in his possession and consequently plaintiff carried no special insurance on the goods. The goods were destroyed by fire and defendant secured from plaintiff an estimate of $175 as their value, which was included as an item in the proof of loss. *Held:* that plaintiff should recover such proportion of $175, the value of the goods, as $37,500, the insurance paid, bore to $38,984.66, the total amount of loss. *Souls* v. *Lowenthal*, 81 N. Y. S. 622.

Warranty—Representations that warehouse is frost proof—Opinion:—In an action against a warehouseman to recover the value of certain bulbs alleged to have been ruined by frost while stored, the evidence adduced by the plaintiff, although not conclusive, was to the effect that the defendant had stated that his warehouse was free and safe from frost, that the bulbs would keep therein and that the warehouse was as frost proof as brick, iron and mortar could reasonably be expected to make it. It was *held* that the charge to the jury to the effect that if defendant stated as a matter of fact that his warehouse was as frost proof as brick, iron and mortar could reasonably be expected to make it, and that as said warehouse was not so frost proof, that the plaintiffs were entitled to recover, was error. That even though evidence was conclusive that the defendant had made such a statement that it would have been at most merely an expression of opinion as to what could be expected of brick, iron and mortar, and that it was not a warranty that all goods stored therein would not be injured by frost. *Hallock et al.* v. *Mallet*, 23 R. & S. 265.

Same—Advertisement containing false statements as to the construction of the warehouse—Liability of warehouseman therefor:—The plaintiff brought an action against the defendant, a warehouseman, for the loss of her goods by fire while stored. Testimony showed that she had been induced to store her goods in this warehouse by representations contained in a circular issued by the warehouseman which stated among other things that "no expense has been spared in supplying light, ventilation and protection against the spread of fire, the exterior being fireproof, and interior being divided off by heavy brick walls, iron doors," etc. The evidence showed that the warehouse had caught fire from an adjacent building and that the fire had been communicated to the warehouse and its contents through wooden window frames. The plaintiff referred to the Act of 1874, ch. 547, sec. 5, in that it required certain structures, among which are warehouses, to have doors, blinds and shutters made of fireproof material on every window and opening above the first story. It was *held* that in view of the evidence that the window frames of the warehouse were wooden; that at the outside of the windows there were no shutters and that the cornices were of wood covered with tin, the statements contained in the circular were false. That the meaning of the term fireproof was well known and that it conveyed no other idea than that the material of which an article was constructed was incombustible. That the statement in regard to the construction of his warehouse was not an expression of opinion for which he would not be liable but was a statement of fact. That being false he was liable for the consequences therefor, being chargeable with knowledge of the conditions about his warehouse. *Hickey* v. *Morrell*, 102 N. Y. 454, rev'g *Same* v. *Same*, 12 Daly, 482. See *Gruel* v. *Yetter*, 26 Misc. 851.

O.

Warehouse receipt—When all the goods not actually in store:—Where a receipt was issued and all of the goods represented thereby were not actually in store and the receipt was transferred or pledged, it was *held* that the receipt did not thereby become void and that the person taking the same, either as purchaser or pledgee, took title to all goods actually in store at the time of the transaction. *McCombie et al.* v. *Spader*, 1 Hun, 193.

Same—When none of goods in custody of the warehouseman:—If a warehouse company has not possession of the goods, its receipt issued upon them are nullities as against the real owners. Warehouse receipts are only *quasi* negotiable securities, and the fact that a person takes a transfer of them in good faith gives him no right over the property on which they purport to be issued, if it was not, in fact, in the custody or possession of warehouseman when the receipts were issued. *Whitney* v. *Wenman*, 140 Fed. 959, 961.

Same—Same—Receipt issued to one not real owner—Purchaser of receipt with notice:—A warehouseman issued a receipt individually to a representative of a firm to which certain goods belonged, but such goods had not at the time of issuance of the receipt been received in store by the warehouseman. The representatives of the firm sold the receipt and the purchaser subsequenly sold the same for value to the warehouseman. The property represented by the receipt had, in the meantime, been purchased by one who had no notice of these transactions. It was *held* that the purchaser of the goods took a good title thereto and that the receipt which was issued when the goods were not actually in store and to one who was not in reality the owner of the goods and had no authority to so act for the owner, was void as to the purchaser of the goods in good faith. *Delaware, L. & W. R. R. Co.* v. *Corwith et al.*, 37 St. Rep. 728.

Same—Refusal to deliver—Identification:—Household furniture was stored with the defendant warehouseman but no receipt given at the time of the storage. Subsequently the depositor executed a bill of sale to the plaintiff for the furniture and sent an agent with the vendee to the warehouse. At this time, the defendant warehouseman gave to such agent a receipt in the name of the vendor in which it was stated that the furniture would be delivered only upon the written order of the depositor or proper identification. The agent of the vendor, who was present at the warehouse with the vendee, identified such vendee but the warehouseman refused to deliver without written order of the vendor. *Held* that the refusal was unjustifiable, that aside from the identification that there was considerable doubt whether or not the clauses referring to delivery of the goods upon the written order and to identification were not merely notices and not part of the contract. Therefore, the dismissal

of the complaint by the trial court was reversed on appeal. *Willner* v. *Morrell*, 8 J. & S. 222.

Same—Receipts not actually issued—Demand:—A warehouseman is liable for grain destroyed by reason of the collapse of the building through his negligence though a warehouse receipt had not actually been issued, the grain having been delivered and received, and the owner entitled to a receipt. The grain having been destroyed, no demand was necessary. *Buffalo Grain Co.* v. *Sowerby* 195 N. Y. 355.

Same—Implication that corn sold is marketable corn—Parol evidence inadmissible:—The defendant contracted to sell a quantity of corn to another and for the purposes of delivery deposited the same in a warehouse and took therefor a receipt in his own name. *Held* that in spite of the fact that the defendant by this transaction intended to deliver the corn to the purchaser, that, in reality, the title to the corn remained in him. Further, that a contract to sell a quantity of corn means marketable corn and that parol evidence of conversations between the parties is not admissible to vary the terms of the warehouse receipt issued to the defendant. *Peck* v. *Armstrong*, 38 Barb. 215.

Same—Valid tender may be made by:—A tender of the warehouse receipt, and an offer to pay charges due thereon, is a valid tender to deliver property under a contract of sale. *Hayden* v. *Demets*, 53 N. Y. 426, aff'd 2 J & S. 344.

Same—Warehouseman not bound by description contained in the receipt:—A warehouseman received in storage a number of barrels said to contain Portland cement. He issued receipts therefor in which it was stated that he had stored in his warehouse a number of barrels containing such cement. It afterwards appeared that the barrels did not contain cement of the grade mentioned but were filled with a sandy substance which was practically worthless. The warehouse receipt had been pledged to secure a loan and the plaintiff had obtained possession thereof from the pledgee after having paid the note for which the receipt was given, he being the guarantor thereon. It was contended in behalf of the plaintiff that if the goods were not Portland cement as represented in the receipts that such receipts were untruthful and therefore issued in violation of the first section of the Factors Act of 1858 as amended by that of 1866 (ch. 326,

Laws of 1858; ch. 440, Laws of 1866). It was *held* that this act did not apply to such a case; further that the character of the representation made by the warehouseman on the receipt was nothing more than that he had actually received a certain number of barrels of what purported to be Portland cement packed as such cement was usually packed and bearing the outward indicia of such article; that the statement as to the contents of the barrels received was in no sense a warranty by the defendant that such contents were actually as described, and that the fault lies wholly with the plaintiff, who placed a degree of faith in the correctness of description contained in the receipt which was totally unwarranted from the nature of the transaction and for which the defendant ought not to be held responsible. *Dean et al.* v. *Driggs*, 137 N. Y. 274, distinguishing *First Nat. Bank of Chicago* v. *Dean et al.*, 137 N. Y. 110; *Myer* v. *Peck*, 28 N. Y. 590; *Armour* v. *Ry. Co.*, 65 N. Y. 101; *Miller* v. *Hannibal & St. Jo. Ry.*, 24 Hun, 607.

Same—Limitation of liability—When valid:—In an action to recover the value of certain laces packed in a drawer of a sideboard stored with defendant warehouseman, *held*, that a limitation of $50 "for any piece or package," together with other apt words in the warehouse receipt and order for delivery of like import, was valid and recovery was limited to that sum. Also *held*, that the limitation applied to each individual article with separate individual identity at the time of storage, and not a concealed portion contained in a whole, although the laces consisted of many pieces, no one of greater value than $50. *Rapp.* v. *Washington Storage Warehouse & Van Co.*, 134 N. Y. S. 855. See also *Healy* v. *N. Y. C. & H. R. R. Co.*, 138 N. Y. S. 287.

Same—Estoppel—Statement in receipt that liquor is stored in "free warehouse" binding on warehouseman:—The plaintiff became the holder of a negotiable warehouse receipt for a quantity of brandy. Printed on the top of the receipt was a list of warehouses operated by the defendant. The list also stated which were "free warehouses" and which were bonded, and it further appeared that the brandy represented by this receipt was stored in one of the warehouses which was stated to be free. It appeared that in the parlance of this business the term "free warehouse" means one not bonded or where liquor is stored upon which the government tax has been paid. It afterward

appeared that in fact the brandy represented by the receipt was stored in a bonded warehouse and that it could not be withdrawn except upon the payment of the government tax thereon. *Held* that the plaintiff was a *bona fide* holder of the receipt within the meaning of the warehouse laws of the state, and that he was entitled to the possession of the brandy upon the payment of storage charges only and that the defendant was bound to pay the government tax due thereon, being estopped by the statement on the receipt that the brandy was in a free warehouse. *First Nat. Bank of Chicago* v. *Dean et al.*, 137 N. Y. 110.

Same—Negotiability:—Warehouse receipts are made negotiable in this state by statute. The indorsement and transfer thereof vests the title to the merchandise represented in the transferee. *Brooks* v. *Hanover Nat. Bank,* 26 Fed. Rep. 301.

Same—Act construed—Bona fide holder:—It was the intention of the legislature by the act of 1858 (sec. 6, ch. 326, Laws of 1858) that warehouse receipts, upon which the word non-negotiable was not plainly written or stamped, were to have certain negotiable qualities imparted to them. *Held:* that it followed from such act that a *bona fide* transfer, in the manner specified in this law with intent to transfer the title to the property, vests such title in the transferee together with all the remedies of the transferror against the warehouseman for failure to make due delivery. *Whitlock et al.* v. *Hay,* 58 N. Y. 484; *Brooks* v. *Hanover Nat. Bank,* 26 Fed. Rep. 301.

Same—Negotiability—Not negotiable the same as bills and notes:—The negotiability of a warehouse receipt is not the same as that of a promissory note or bill of exchange. By the indorsement and delivery of such a receipt the indorsee for value is entitled to hold the property represented thereby under the conditions stated in the warehouse law of this state. Unless there has been fraud or neglect in the issuance of the receipt the holder is entitled to no more than the original property deposited. *Dean et al.* v. *Driggs,* 137 N. Y. 274.

Same—As collateral—Liability of pledgee for storage charges —Must take possession of the goods—What constitutes possession a question of fact:—Where a warehouse receipt has been used as collateral security to secure the payment of a note and the pledgee surrenders the receipt to one who was guarantor on

the note, and who paid the same, it was *held* that by thus obtaining possession of the receipt such guarantor did not thereby become liable for the payment of storage charges, and that in order to hold him so liable it would be necessary to show that he did some act from which it could be shown that he took possession of the goods. It appeared from the evidence that one in the employ of such holder of the receipt had sent his clerk to the warehouse to examine the property. In reply to an inquiry made by an employee of the warehouseman asking whether or not a bill should be sent for the storage charges, such clerk stated that they had better send such a bill. It was further *held* that this evidence was not sufficient upon which to direct the verdict and that the question was one of fact as to whether or not the holder of the receipt had taken possession of the goods, and that the person who becomes the holder of a warehouse receipt as collateral security does not by reason of his having possession of the receipt become bound for the storage charges due upon the property. He has a qualified title to the property and if he so elects may reduce the property to possession by the payment of storage charges. *Driggs* v. *Dean*, 167 N. Y. 121, rev'g. *Same* v. *Same*, 37 App. Div. 630.

Same—Same—Effect of substitution of other goods:—The plaintiff trust company brought an action against the defendant on certain warehouse receipts which had been pledged with it as collateral security for the payment of a loan. One of the defendants, the owner of the goods, had stored the same in a warehouse and had agreed with the proprietor thereof that the negotiable receipts which were to be issued therefor should contain no marks by which the particular goods stored could be identified, the object being that the owner desired to substitute other goods which he subsequently did. At the time of the default in the payment of the note for which the warehouse receipt was pledged, it appeared that the quantity of goods remaining in the warehouse and belonging to the original owner was less than that called for by the receipt and that the full amount was made up from goods of a similar character which had been intrusted to the owner as factor and which he had stored along with his own goods; that subsequent to this transaction the warehouseman issued one receipt covering all of the goods then standing in the name of the owner, which receipt

was taken by the plaintiff as collateral in lieu of the former receipts held by it. It was *held* that the agreement between the warehouseman and the owner as to the substitution of other goods was a lawful and proper agreement; that the pledge made of the goods which were held as factor was valid under the Factors Act of this state, and that the plaintiff was entitled to recover for all loss and advances made by it against all of the property stored. *New York Security & Trust Co.* v. *Lipman*, 91 Hun, 554. See also *Blyndenstein et al.* v. *New York S. & T. Co.*, 15 C. C. A. 14; *Same* v. *Same*, 59 Fed. Rep. 12.

Same—Delivery of goods without return of receipt—Section 633 of the penal code construed:—An owner of goods shipped the same to a bank, care of the plaintiff warehouseman. When the goods were received by the plaintiff they were stored and a receipt issued to the owner therefor. The owner thereupon attached to the receipt a draft drawn on the defendant at ninety days' sight, which draft was duly accepted and the owner discounted the same at the bank. The defendant was to have possession of the goods upon payment of the draft and the delivery to him of the receipt. The defendant, after accepting the draft, had taken possession of the goods, without authority from the plaintiff. The defendant failing to pay the draft when due, the plaintiff paid the same and procured the warehouse receipt. In an action for the amount of the draft, it was contended that the plaintiff was not entitled to recover on the ground that he had parted with the custody of the goods in violation of sec. 633 of the Penal Code which forbids warehousemen to deliver property unless the receipt be surrendered. It was *held* that the finding of the jury that the goods were taken from the plaintiff by the defendant, without permission of the former, was conclusive and that in such a case the above section of the Penal Code does not apply. *Burnham* v. *Cape Vincent Seed Co.*, 142 N. Y. 169, aff'g 49 St. Rep. 918.

Same—Same—When warehouseman liable:—In an action by the plaintiff bank against a warehouseman, to recover the value of a quantity of wheat and oats represented by certain warehouse receipts, the following procedure was the custom between the parties: A dealer in grain would store the same with the defendant and procure therefor his receipt; when he desired to sell the same would draw his check on the plaintiff bank and

attach his receipt thereto, the plaintiff thereupon honoring the receipt. While the receipt was still in the hands of the plaintiff bank, the warehouseman would deliver the grain to such dealer who would in turn deliver it to the railroad for shipment. The railroad would then issue its bill of lading to the dealer for the grain received and the dealer would then present the bill of lading to the bank, obtain the warehouse receipts and deliver them to the defendant. In the instance from which the cause of action arose, the dealer, although he had received the bill of lading from the railroad company, failed to deliver it to the plaintiff. It was contended in behalf of the defendant that there was a waiver on the part of the plaintiff of the benefits of the warehouse act. It was *held* that there was not sufficient evidence in support of such waiver to warrant the submission thereof to the jury; and that if the defendant saw fit to intrust the bill of lading to the dealer, he did so at his peril; finally that the arrangement on the part of the plaintiff to hold the receipt until it had received the bill of lading did not amount to a waiver of the provisions of the statute. *First Nat. Bank of Penn Yan* v. *Bruen,* 23 Weekly Dig. 90.

Same—Receipt of grain and issuance of warehouse receipt without notice of claim for advances—Warehouseman not liable: —One engaged regularly in the business of a warehouseman issued a receipt for grain stored with him in the name of the master of the vessel who delivered the grain. At the time of the issuance of this receipt the warehouseman had no notice of any advances made against the grain. It appeared that the grain had been shipped to the order of the consignor, care of the consignee, the former's broker. The master of the vessel indorsed the receipt to the broker who had previously pledged the bill of lading in order to obtain funds with which to pay the draft attached thereto, being for the price of the grain. The broker afterward negotiated the receipt to several parties who brought an action against the warehouseman for the conversion of the grain. It was *held* that the transaction was one of mere bailment and imposed no further duty upon the defendant than to restore the property to his bailor when no intervening rights of others had been asserted. The defendant had no notice of the transaction with the bill of lading and there were no facts brought to his attention from which he could be charged with such notice. *Hazard* v. *Abel, Prest., etc.,* 1 Sheld. 364.

Same—Delivery upon, without notice of claim:—A warehouseman received a large quantity of grain and, under instructions from the consignor, issued a receipt in the name of the consignee. It appeared that the consignee, who was a purchaser of the grain, had not paid therefor and, in fact, was at the time insolvent, but the defendant warehouseman had no notice of this nor any notice that his consignor had any claim against the consignee. The consignee pledged the receipt to a third party and secured advances thereon. In an action brought against the warehouseman, it was *held* that the issuance of the receipt by him under the above stated facts was proper and that he was in no wise liable for claims of the consignor against the goods of which he had no notice and that the pledge thereof to the third party was a valid pledge. *Hoyt* v. *Baker,* 15 Abb. Pr. (N. S.) 405; *Hazard* v. *Abel,* 15 Abb. Pr. (N. S.) 413.

Same—Receipt issued by superintendent to owner of factory not a warehouse receipt:—The owner of a factory, in which was stored a large quantity of oil, procured from his superintendent a receipt in form similar to warehouse receipts, in which it was stated that the oil was deliverable to the order of such owner. The receipt was subsequently pledged and there was an attachment levied upon the oil in an action against the owner of the factory. *Held;* that such receipt did not constitute a warehouse receipt within the meaning of the warehouse law, title did not pass thereby, and that the execution levied by the sheriff upon the oil was validly levied. *Yenni* v. *McNamee,* 45 N. Y. 614.

Same—Fraudulently issued by president of a warehouse company in his own name—Used as collateral security—Facts constituting notice—Warehouseman not estopped to show goods are not actually in storage—Evidence:—The plaintiff, a national bank, loaned money to the president of the defendant warehouse company upon a receipt for a quantity of cotton, as collateral security. The warehouse receipt was negotiable and in favor of the president of the company individually and was signed by him as president. The note given for which the receipt was collateral was not paid and the bank instituted an action against the defendant warehouseman to recover the cotton represented, or its value. It appeared that the by-laws of the defendant authorized either its president or its treasurer to sign warehouse receipts. It was *held* that an application of the

doctrines of principal and agent to such by-laws could not cause them to be construed as to authorize the president or treasurer to issue a receipt in his own name; that the receipt itself being issued in the name of the president personally and signed by him as president was sufficient to put the plaintiff on notice and that the plaintiff was not a *bona fide* holder of the receipt. Further that the defendant was not estopped to show that the goods mentioned in the receipt were not actually in store. It was contended in behalf of the plaintiff that a new trial should be granted because at the trial of the case the plaintiff was not permitted to introduce evidence as to a conversation held between its officers and the president at the time of the transaction in question. It was *held* that only the declaration of one who is at the time acting in the capacity of agent can be receivable as admissions against his principal. *Bank of New York N. B. Association* v. *American Dock & Trust Co.*, 143 N. Y. 559, aff'g *Same* v. *Same*, 70 Hun, 152; *Corn Exchange Bank* v. *American Dock & Trust Co.*, 149 N. Y. 174, rev'g *Same* v. *Same*, 78 Hun, 400.

Same—Same—Same—Inquiries made by a holder of the receipt—Implied authority to officer to issue receipts in his own name—Questions for the jury:—Where a case arose on a similar transaction to those set forth above but it further appeared that the plaintiff bank had made inquiries of another officer of the defendant company as to whether or not the president had authority to issue receipts in his own name and was told that he had such authority, and that on four or five occasions the president had issued such receipts and they had been honored by the defendant company by a delivery of the goods represented. The plaintiff was not permitted to go to the jury on the question as to whether or not such actions on the part of the defendant did not estop it to deny that its president had authority to issue receipts in his own name, but upon motion of the defendant a verdict was directed in its favor. It was *held* on appeal that as the verdict had been directed against the plaintiff it was entitled to the most favorable inferences which might be drawn from the evidence. That where a principal permits its agent to do an act beyond his authority without objection, he is liable to those who were not aware of any want of authority to the same extent as if the necessary power had been directly conferred.

While it did not appear from the evidence that the directors had knowledge that the president had on several occasions issued receipts in his own name and such receipts had been honored, nevertheless, it was a question for the jury to determine whether the directors *ought* not to have known, under all the circumstances, that such transactions had taken place. Therefore according to stipulation contained in notice of appeal, judgment absolute was directed against the defendant. *Hanover Nat. Bank* v. *American Dock & Trust Co.*, 148 N. Y. 612, aff'g *Same* v. *Same*, 75 Hun, 55.

Same—Conditions—Perishable goods:—Action for damage to muskrat skins stored with defendant. *Held:* that when the skins were delivered in good condition and upon their return found to be damaged, that defendant was liable unless it was prepared to show that the damage resulted from causes for which it was not responsible. The provision in the warehouse receipt "perishable goods are received only at the owner's risk," does not exempt a warehouseman from liability for his own negligence. It is the essential element of the contract that the bailee for hire will use reasonable care to preserve goods intrusted to his care, and if he proposes to be exempt from the discharge of this part of the obligation, it must be done in language that cannot be mistaken, and which gives full notice of the exception to the natural import of the contract. *Herzig* v. *N. Y. Cold Storage Co.*, 100 N. Y. S. 603, affirmed 190 N. Y. 511.

Same—Parol evidence receivable to explain meaning of term "cold storage":—The plaintiff brought an action against the defendant, a warehouseman, to recover the value of certain poultry which was alleged to have been spoiled while in the cold storage rooms of the defendant's warehouse. On the trial of the case the plaintiff offered to prove that the phrase "cold storage" had a significance, in the business in which it was employed, which would require the defendant to keep the poultry at a temperature below freezing. This evidence was ruled out by the court. The plaintiff also offered to prove that there was a verbal agreement made at the time of the storage by the terms of which the defendant agreed to keep the poultry in such a degree of cold as would freeze it and thus preserve it from injury or spoiling while it remained in his warehouse. The court also

excluded this testimony. It was *held* on appeal that the evidence to explain the meaning of the phrase "cold storage" should have been received in accordance with the legal rule that evidence is always admissible to explain meanings of terms used in any particular trade or occupation, when their meaning becomes material in order to construe a contract; and further, that it was manifest from an inspection of the warehouse receipt that it was not made or accepted so as to include the broad ground of the entire contract. The plaintiff did not propose to contradict or vary the receipt but to add to it an attribute of the agreement between the parties defining the degree of cold agreed upon, which had been omitted from the receipt. *Behrman* v. *Linde*, 47 Hun, 530.

Same—Evidence not admissible to show other transactions:—In an action against a warehouseman it was charged that he had issued a receipt for goods before having them in store. At the trial evidence was admitted, under objection by the defendant, that the defendant, upon another occasion, had given a receipt for other goods before their actual receipt at the warehouse. *Held* on appeal that the admission of such evidence constituted reversible error. *McCombie et al.* v. *Spader*, 1 Hun, 193.

R.

Bill of lading—"Not negotiable"—Delivery—Warehouseman not liable:—A seller refused to receive back certain goods which a purchaser had declined to accept. The carrier stored them with a warhouseman who later and without notice of a new right appearing, delivered them to the seller. The bill of lading designated the seller as the consignee and had printed on its face the words "Not Negotiable." The assignee of the buyer paid the account, received the duplicate bill of lading, and demanded the goods. Judgment for plaintiff reversed. *Queen Mfg. Co.* v. *F. C. Linde Co.*, 117 N. Y. S. 1032.

U.

Taking of land for warehouse—Act authorizing, unconstitutional—Incidental benefit to public not sufficient:—A company was incorporated for the purposes of affording a basin or harbor for vessels and for the warehousing of merchandise. By a sub-

sequent act of the legislature the company was permitted, in the event that it was unable to ascertain the owner or owners of certain lands after the exercise of reasonable diligence, to condemn the same and acquire title in the manner provided by law for the acquisition of title to lands for railroad purposes. The company sought to condemn lands pursuant to this act; in the proceedings it appeared that the public would be entitled simply to an entrance to the basin constructed by the company and to the use of the center thereof, the surrounding lands to be occupied with private warehouses. The court held that it could not regard such a project as one for a public purpose or use which would justify the delegation to this company of the right of eminent domain; further that the effect of such procedure would be the taking of private property for private use which could never be validly authorized by legislative act, although it might be true that the structure intended to be built on the property sought to be condemned might incidentally tend to benefit the public by affording additional accommodations for business, commerce or manufacture. *Matter Appl'n of E. B. W. & M. Co.*, 96 N. Y. 42.

Liability of directors—Failure to file annual report:—The defendants, who were directors in a corporation doing a general warehouse business, were sued by the plaintiff upon certain notes signed by their corporation under the following circumstances. The payment of such notes was secured by the deposit of a warehouse receipt in a bank from which receipt it appeared that the corporation had a large quantity of grain to its credit in the warehouses of a warehouse association which had issued the receipt. Subsequently, the corporation withdrew the grain from the warehouses of the association and disposed of the same. The notes not being paid by the corporation the warehouse association paid the same, the bank indorsing the receipt and notes in blank. The association thereupon assigned the receipt and notes to the plaintiff who brought suit against the defendants individually on the ground that they were so liable under the laws of the state of New York, it appearing that the corporation of which they were directors had failed to file its annual report as required by law. On the trial verdict was rendered for the plaintiff; a denial of a motion for a new trial was affirmed on appeal. *Bedford* v. *Sherman et al.*, 68 Hun, 317.

Same—Charged with duty—Reasonable inspection of the books:—The directors of a warehouse corporation are chargeable with the knowledge of the entries made on its books in the ordinary course of its business. Such directors are chargeable with the duty of a reasonable inspection of the books and a reasonable supervision of the conduct of the officers. *Hanover Nat. Bank* v. *American Dock & Trust Co.*, 148 N. Y. 612.

Liability of stockholders—"Full paid stock" construed—Statute of limitations.—The words "full paid stock" as used in ch. 701 of the Laws of 1872 do not refer to the whole capital stock of the company but to the stock held by individual stockholders. Where a stockholder has paid in full his subscription to stock, his stock is full paid. There is no liability under this act for debts made after the payment of the capital stock and the recording of the certificate as therein required. In an action brought more than six years after the cause of action had accrued, the statute of limitations was a defense which should have been sustained. The judgment which was given for the plaintiff was reversed on appeal. *Nat. Park Bank* v. *Remsen*, 23 J. & S. 144.

Public warehousemen—Statute prescribing rates for storage, constitutional—Indictment—If such rates be unreasonably low, quœre:—The defendant was indicted under ch. 581 of the Laws of 1888 for the alleged violation thereof in that he charged more than the rate allowed by such law for the elevating of a cargo of grain and for exacting more than the actual cost for shoveling the grain to the leg of the elevator. The defendant contended that the act in question was unconstitutional in that it deprived him of liberty and property without due process of law, contrary to art. 1, sec. 6, of the constitution of the state of New York, and art. 14, sec. 1, of the constitution of the United States as amended. The court *held* that the power of the legislature to regulate the charge for elevating grain, even where the business is carried on by individuals upon their own premises, fell within the scope of the police power of the state as it was an exercise of authority necessary for the internal regulation and government of the state for its public welfare; that the business of elevating grain was one "affected with a public interest," that

warehousemen exercise a public business and assume obligations to serve the entire public and that their property, therefore, in a legal sense, is devoted to a public use. *The People* v. *Budd,* 117 N. Y. 1, aff'd 143 U. S. 517. See *N. D. ex-rel. Stoeser* v. *Brass,* 2 N. D. 482, aff'd 153 U. S. 319; *Munn* v. *Illinois,* 69 Ill. 80, aff'd 94 U. S. 113.

NOTE—In the opinion in *The People* v. *Budd* (143 U. S. 517) the Supreme Court declined to anticipate what its decision might have been had the storage rates prescribed by statute been inadequate. In the first of the above cases to be decided by the United States Supreme Court, *Munn* v. *Illinois,* two justices dissented; in the second case, *The People* v. *Budd,* three justices dissented; in the last case, *N. D. ex rel. Stoeser* v. *Brass,* there were four dissenting justices. See also *State* v. *Associated Press,* 159 Mo. 410, in which Mr. Justice Sherwood severely criticizes the doctrine of *People* v. *Munn;* See also the following leading cases: *People* v. *Walsh,* 117 N. Y. 621. (The report of this case in 22 N. E. Rep. p. 670, contains Mr. Justice Peckham's dissenting opinion.) *Dow* v. *Beidelman,* 125 U. S. 680; *Los Angeles City Water Co.* v. *City of Los Angeles,* 177 U. S. 558; *Covington & L. S. Co.* v. *Sandford,* 164 U. S. 578; *Lake Shore & M. Ry. Co.* v. *Smith,* 173 U. S. 684; *M. & St. Paul Ry. Co.* v. *State,* 134 U. S. 418; *Minneapolis E. Ry. Co.* v. *State,* 134 U. S. 467; *Stone* v. *Farmers' L. & T. Co.,* 116 U. S. 307; *Smyth* v. *Ames,* 169 U. S. 466; *Smyth* v. *Ames,* 171 U. S. 361; *People* v. *Walsh,* 36 L. ed. 247.

CHAPTER XXXIII.

NORTH CAROLINA

LAWS PERTAINING TO WAREHOUSEMEN

Who may become:—Any corporation organized under the laws of this state and whose charter authorizes it to engage in the business of a warehouseman, may become a public warehouseman and authorized to keep and maintain public warehouses for the storage of cotton, goods, wares and other merchandise as hereinafter prescribed and upon giving the bond hereinafter required. Pells Revisal, 1908, sec. 3029.

Above section construed—Embraces packing house company:—Defendant, a packing company, a New Jersey corporation, had its principal office in Kansas, and maintained in North Carolina warehouses and cold storage plants with necessary employees. The business of defendant considered and held to constitute "doing business" in the state, and that above Act is valid. *Lacy* v. *Armour Packing Co.*, 134 N. C. 567; affirmed 200 U. S. 226.

Bond to Clerk of Court; penal sum:—Every such corporation so organized under the preceding section, except such as shall have a capital stock of not less than five thousand dollars, to become a public warehouseman shall give bond in a reliable bonding or surety company on an individual bond with sufficient sureties payable to the State of North Carolina in an amount not less than ten thousand dollars, to be approved, filed with and recorded by the clerk of the superior court of the county in which the warehouse is located, for the faithful performance of the duties of a public warehouseman; but if such corporation has a capital stock of not less than five thousand dollars, then it shall not be required to give the bond mentioned in this section. Pells Revisal 1908, sec. 3030.

Injured person may sue on bond:—Whenever such warehouseman fails to perform any duty or violates any of the provisions of this, any person injured by such failure or vio-

lation may bring an action in his name and to his own use in any court of competent jurisdiction on the bond of said warehouseman. *Id.* sec. 3031.

Insurance on stored property; storage receipts:—Every such warehouseman shall, when requested thereto in writing by a party placing property with it on storage, cause such property to be insured; every such warehouseman shall, except as hereinafter provided, give to each person depositing property with it for storage a receipt therefore, which shall be negotiable in form and shall describe the property, distinctly stating the brand or distinguishing marks upon it, and if such property is grain, the quantity and inspected grade thereof. The receipts shall also state the rate of charges for storing the property and amount and rate of any other charge thereon, and also the amount of the bond and name of the company in which the bond is taken, given to the said clerk of the court as hereinabove provided: *Procided,* that every such warehouseman shall, upon request of any person depositing property with it for storage, give to such person its non-negotiable receipt therefor, which receipt shall have the words "Non-negotiable" plainly written, printed or stamped on the face thereof: *And provided,* that the assignment of said non-negotiable receipt shall not be effective until recorded on the books of the warehousemen issuing it. *Id.* sec. 3032.

Title passes with storage receipt:—The title to cotton goods, merchandise and chattels stored in public warehouses shall pass to a purchaser or pledgee by the indorsement and delivery to him of the warehouseman's receipt therefor, signed by the person to whom such receipt was originally given or by the indorsee of such receipt, unless such receipt is non-negotiable. *Id.* sec. 3033.

Title when goods are mixed:—When grain or other property is stored in public warehouses in such a manner that different lots or parcels are mixed together, or that the identity cannot be accurately preserved, the warehouseman's receipt for any such portion of grain or property shall be deemed a valid title to so much thereof, as is designated in receipt without regard to separation or identification. *Id.* sec. 3034.

Books of account kept; open for inspection:—Every such warehouseman shall keep a book in which shall be entered an

account of all its transactions relating to warehousing, storing and insuring cotton, goods, wares and merchandise, and to the issuing of receipts therefor, which books shall be open to the inspection of any person actually interested in the property to which such entry relates. *Id.* sec. 3035.

Sale of property for storage charges one year overdue; proceeds; notice of sale:—Every such public warehouseman which shall have in its possession any property by virtue of any agreement or warehouse receipt for the same, for which a claim for storage is at least one year overdue, may proceed to sell the same at public auction, and out of the proceeds may retain all charges for storage of such goods, wares and merchandise, and any advances that may have been made thereon by it, and the expense of advertising and sale thereof, but no notice of such sale to the person in whose name the said goods, wares and merchandise were stored, requiring him, naming him, to pay the arrears or amount due for such storage, and in case of default in so doing, the goods, wares and merchandise shall be sold to pay the same, at a time and place to be specified in such notice. *Id.* sec. 3036.

Notice; how served; return of; publication:—The notice required in the last preceding section shall be served by delivering it to the person in whose name such goods, wares and merchandise were stored, or by leaving it at his usual place of abode, if within this state, at least thirty days before the time of sale, and a return of the service shall be made by some officer authorized to serve civil process, or by some other person with an affidavit of the truth of the return. If the party storing such goods cannot with reasonable diligence be found within this state, then such notice shall be given by publication once each week for two successive weeks, the last publication to be at least ten days before the time of such sale, in a newspaper published in the city or town where such warehouse is located. In the event that the party storing such goods shall have parted with the same, and the purchaser shall have notified the warehouseman with his address, such notice shall be given to such person in lieu of the person storing the goods. *Id.* sec. 3037.

Surplus disposed of:—Every such warehouseman shall make an entry in a book kept for that purpose of the amount of the proceeds of all sales, and any balance shall be paid over

to the person entitled thereto on demand. If such balance is not demanded by the owner within six months after such sale, it shall be paid by said warehouseman to the clerk of the court of the county in which said warehouseman is located, and he shall pay the same to the party entitled thereto, if demanded within ten years after said sale; and such warehouseman shall at the same time file with said clerk an affidavit in which shall be stated the name and place of residence of the party entitled thereto so far as the same are known. *Id.* sec. 3038.

When perishable or dangerous property is stored; proceeds of sale paid to clerk, when:—Whenever a public warehouseman has in its possession any property of a perishable nature, or which will deteriorate greatly in value by keeping, or upon which the charges for storage will be likely to exceed the value thereof, or which by its odor, leakage, inflammability or explosive nature is likely to injure other goods, such property having been stored upon non-negotiable receipts, and when the warehouseman has notified the person in whose name the property was received to remove such property, and if such person has refused or omitted to remove the property and to pay the storage and proper charges thereon, the public warehouseman may in the exercise of a reasonable discretion, sell the same at public or private sale without advertising, and the proceeds, if there are any, after deducting the amount of said storage and charges, and expense of sale, shall be paid or credited to the person in whose name the property was stored, and if said person cannot be found on reasonable inquiry, the sale may be made without any notice and the proceeds of such sale after deducting the amount of storage or expense of sale, shall be paid to the clerk of the court of the county wherein said warehouse is situated, who shall pay the same to the person entitled thereto, if called for or claimed by the rightful owner within five years of the receipt thereof by said clerk. *Id.* sec. 3039.

When unable to sell perishable or worthless property:—Whenever a public warehouseman under the provisions of the preceding section has made a reasonable effort to sell perishable and worthless property, and has been unable to do so because of its being of little or no value, it may then proceed to dispose of such property in any lawful manner, and it shall not be liable in any way for property so disposed of. *Id.* sec. 3040.

Storer liable for charges, when:—Whenever a public warehouseman under the provisions of the two preceding sections has sold or otherwise disposed of property and the proceeds thereof have not been sufficient to pay the expenses of sale, storage and other charges against said property, then the person in whose name said property was stored shall be liable to said public warehouseman for such deficit. *Id.* sec. 3041.

Maximum charges fixed:—The charges and expenses of handling and selling leaf tobacco upon the floor of tobacco warehouses shall not exceed the following schedule of prices, viz: For auction fees, fifteen cents on all piles of one hundred pounds or less, and twenty-five cents on all piles over one hundred pounds; for weighing and handling, ten cents per pile for all piles less than one hundred pounds, for all piles over one hundred pounds at the rate of ten cents per hundred pounds; for commissions on the gross sales of leaf tobacco in said warehouses not to exceed two and one-half per centum. *Id.* sec. 3042.

Weighers sworn:—That all leaf tobacco sold upon the floor of any tobacco warehouse shall first be weighed by some reliable person, who shall have first sworn and subscribed to the following oath to wit: "I do solemnly swear or affirm) that I will correctly and accurately weigh all tobacco offered for sale at the warehouse of ————, and correctly test and keep accurate the scales upon which the tobacco so offered for sale is weighed." Said oath to be filed in the office of the clerk of the superior court of the county in which said warehouse is situated. *Id.* sec. 3043.

Bill of charges rendered; penalty:—That the proprietor of each and every warehouse shall render to each seller of tobacco at his warehouse a bill plainly stating the amount charged for weighing and handling, the amounts charged for auction fees, and the commission charged on such sale, and it shall be unlawful for any other charges or fees to be made or accepted. For each and every violation of the provisions of this sub-chapter a penalty of ten dollars may be recovered by any one injured thereby. *Id.* sec. 3044.

Warehousemen must keep and report amounts sold:—On and after the first day of August, one thousand nine hundred

and seven, the proprietor of each and every leaf tobacco warehouse doing business in this state shall keep a correct account of the number of pounds of leaf tobacco sold upon the floor of his warehouse daily. On or before the fifth day of each succeeding month the said warehouse proprietors shall make a statement, under oath, of all the tobacco so sold upon the floor of his warehouse during the past month and shall transmit the said statement, at once, to the commissioner of agriculture at Raleigh, North Carolina. The reports so made to the commissioner of agriculture shall be so arranged and classified as to show the number of pounds of tobacco sold for the producers of tobacco from first hand; the number of pounds sold for dealers; and the number of pounds resold by the proprietor of the warehouse for his own account or for the account of some other warehouse. *Id.* sec. 3982a.

Reports copied into books open to public:—The commissioner of agriculture shall cause said statement to be accurately copied into a book to be kept for this purpose, and shall keep separate and apart the statements returned to him from each leaf tobacco market in the state, so as to show the number of pounds of tobacco sold by each market for the sale of leaf tobacco; the number of pounds sold by producers, and the number of pounds resold upon each market. And the said commissioner of agriculture shall keep said books open to the inspection of the public, and shall, on or before the tenth day of each month, after the receipt of the reports above required to be made to him on or before the fifth day of each month, cause the said reports to be published in the Bulletin issued by the agricultural department, and in one or more journals published in the interest of the growth, sale and manufacture of tobacco in the state, or having a large circulation therein. *Id.* sec. 3982b.

Penalty for violating two preceding sections:—Any person wilfully violating the provisions of this act shall be guilty of a misdemeanor and punished within the discretion of the court, and, in addition thereto, shall be subject to a penalty of five hundred dollars, to be sued for in the county of Wake by the attorney general whenever he may be advised by the commissioner of agriculture that persons required by this act to make reports to him have failed to do so. *Id.* sec. 3982c.

Warehouse, unlawfully disposing of property stored in public:—If any person unlawfully sells, pledges, lends or in any other way disposes of or permits or is a party to the unlawful selling, pledging, lending, or other disposition of any goods, wares, merchandise, or anything deposited in a public warehouse without the authority of the party who deposited the same, he shall be punished by a fine not to exceed two thousand dollars and by imprisonment in the state's prison for not more than three years, but no officer, manager or agent of such public warehouse shall be liable to the penalties provided in this section, unless with the intent to injure or defraud any person, he so sells, pledges, lends, or in any other way disposes of the same, or is a party to the selling, pledging, lending or other disposition of any goods, wares, merchandise, article or thing so deposited. *Id.* sec. 3831.

Lien for storage charges:—Every person, firm or corporation who shall furnish storage room for furniture, goods, wares or merchandise and make a charge for storing the same, shall have the right to retain possession of and a lien upon all furniture, goods, wares or merchandise until such storage charges are paid. An Act to create a lien upon certain goods for storage charges. Took effect March 12, 1913. Public Laws, North Carolina, 1913, Chap. 192, page 313, Sec. 1.

Sale for charges:—If such charges are not paid within ten days after they become due then such person, firm or corporation is authorized to sell said furniture, goods, wares or merchandise at the county courthouse door, after first advertising such sale for ten days at said courthouse door and three other public places in said county, or in some newspaper published in said county where the goods are stored, and out of the proceeds of such sale to pay the costs and expenses of sale and all costs and charges due for storage, and the surplus, if any, pay to the owner of such furniture, goods, wares or merchandise. *Id.* Sec. 2.

DECISIONS AFFECTING WAREHOUSEMEN

B.

Warehouseman not insurers—Damages—Negligence:—While warehousemen are not insurers like common carriers, they are liable for damages caused by their negligence, to articles stored

with them. *Motley & Co.* v. *Southern Finishing & Warehouse Co.*, 122 N. C. 347.

Warehousemen—Ordinary care required—Definition of:—Plaintiff shipped by defendant certain goods to Asheville where defendant placed them in its warehouse with the understanding plaintiff would pay defendant for storing them. The evidence tended to show that the warehouse was destroyed by fire carried by the wind from some cars of defendant which had caught fire. The fire did not originate in the warehouse and the only suggestion of negligence was that there was in the warehouse or in the cars nearby some explosives which rendered it dangerous for the firemen to go near. It was conceded that defendant held the goods as a warehouseman. *Held:* that, as to the responsibility of the present bailee (warehouseman) ordinary or average diligence is required. This is such care and diligence as prudent persons of the same class are wont to exercise toward such property, or in the management of their own property under like circumstances. For failure to exercise this degree of care and diligence the bailee must respond. The burden of proof is on the plaintiff to show negligence. The fact that the goods are destroyed by fire raises no presumption of negligence on the part of the bailee. Ordinary care is required and is that which men of common prudence generally exercise about their own affairs in the age and country in which they live. Judgment for defendant affirmed. *Lyman* v. *Southern Ry. Co.*, 132 N. C. 721.

Conversion—Refusal to deliver:—Where a bailee refuses on demand to deliver a note to the owner, who is entitled to the possession thereof, it constitutes a conversion, and an action of trover will lie against the bailee. *Smith* v. *Durham*, 127 N. C. 417.

F.

Carriers—When liable as warehousemen and duty to care for baggage:—Plaintiff's salesman delivered to defendant two trunks containing samples to be carried to his destination. Upon the arrival there of the trunks defendant placed them upon the platform of its freight depot where they remained three days, during which time the contents were damaged by rain. *Held:* that liability of defendant as a carrier having ceased and its liability as a warehouseman having commenced that it was its duty to place the baggage in a proper and suitable place and to exercise ordin-

ary care and diligence in safely keeping it; that wherever the place of deposit might be, to see that the baggage was protected from injury by exposure to the weather, or other cause. Judgment for plaintiff affirmed. *Charlotte Trouser Co.* v. *S. A. L. Ry. Co.*, 139 N. C. 382.

Loss by fire—Degree of diligence required—Suggestions by bailor or others:—A railroad company had in its possession as warehousemen, the goods of plaintiff, upon which the freight had been paid. The goods were retained in the warehouse at plaintiff's request. A fire broke out near the warehouse but not on the property of the company. While the fire was burning plaintiff asked permission to remove his goods. This was refused, because, in the opinion of the company's officers, if the warehouse were opened much of the property stored therein would be stolen, and also because they did not think at that time there was danger of the warehouse taking fire. The company made every effort in its power to prevent the communication of the fire to the warehouse, and, after it was plain that such efforts would prove fruitless, had the doors of the warehouse broken open and as many goods removed therefrom as possible. The company had property of very great value so located that it must have been burned before the warehouse could take fire, and the utmost diligence was used to remove this property. If such efforts had been successful, the danger of the warehouse taking fire would have been greatly reduced. *Held* that it was not the duty of the company to act upon the suggestion of plaintiff, or strangers, as to the best method to save goods in the warehouse. That if it used all means at its command and acted upon the *bona fide* judgment of its employees as to the best method to prevent the destruction or loss of the warehouse and goods therein, it was not liable for the destruction of plaintiff's goods. The custodian of another's property, who uses the means which, at the time of danger, appear to him best for its preservation is not to be held responsible for failure to adopt measures which subsequent events show would have produced better results. An honest and reasonable effort made in the exercise of an honest judgment is all the law requires of him. *Turrentine* v. *Wilmington & W. R. R. Co.*, 100 N. C. 375.

Same—Negligence—Proximate cause:—In an action for damages against a railway company to recover the value of goods lost by the alleged negligence of the defendant, it appeared that after the arrival of the goods they were placed on a platform at the depot for the convenience of delivery to consignees, and remained there for nearly two days; notice of their arrival was given the plaintiff who paid the freight charges with full knowledge of the place of deposit, but failed to remove them on account of his inability at the time to procure the services of city draymen for that purpose, and in the afternoon of the second day they were destroyed by fire, together with much of defendant's property. *Held,* (1) There was a delivery in law of the goods to the plaintiff consignee, which exonerated the defendant company from liability as warehousemen; (2) the fact that the fire originated in a steam cotton compress, erected on the company's premises with its permission but not under its control, does not constitute neglibence in the defendant, the permission to erect the same not being the proximate cause of the injury sustained by the plaintiff. *Clark & Co.* v. *Charlotte, C. & A. R. R. Co.,* 85 N. C. 423.

Same—Exclusion of evidence—Error:—The plaintiff brought an action against the defendant steamboat company for failure to safely convey to him certain goods which were destroyed by fire in defendant's warehouse, where they had been stopped on the route There was a contract on the bill of lading that the defendant was not to be liable for any loss or damage arising from fire, etc. *Held* that questions tending to show defendant had negligently allowed an accumulation of freight in its warehouse were improperly excluded. *Hornthal* v. *Roanoke, N. & B. S. Co.,* 107 N. C. 76.

Negligence:—Warehousemen are liable under the general law for damages caused by their negligence. *Motley* v. *Southern Finishing & Warehouse Co.,* 124 N. C. 232.

Ignorance and want of experience of bailee known to bailor—Ordinary care:—Where it was known to bailor at the time of storage that the bailee knew nothing about tobacco, and had had no experience in handling it, the bailee would not be *held* liable for injury resulting from want of skill and experience; but would be bound to use such ordinary care as a prudent man would exercise to guard against moisture in the structure of

the warehouse and the location of the tobacco. *Motley* v. *Southern Finishing & Warehouse Co.*, 126 N. C. 339.

O.

Measure of damages:—The measure of damages for property damaged while in the care of a storage or warehouse company is the difference between the market value of the property in its damaged condition and what it would have sold for, if undamaged, on the day of its return to the owner. *Motley & Co.* v. *Southern Finishing & Warehouse Co.*, 122 N. C. 347.

R.

Bill of lading—Ordinary care:—The contract on the bill of lading discharged the defendant from its liability as an insurer, if ordinary care was exercised in protecting the goods while in its warehouse. *Hornthal* v. *Roanoke, N. & B. S. Co.*, 107 N. C. 76.

Same—Limitation as to—Notice of loss, void:—A clause in a bill of lading that notice of loss or damage to the goods must be given in writing to a carrier within thirty days after delivery thereof, or after due time for such delivery, is unreasonable and void. *Gwyn Harper Mfg. Co.* v. *Carolina Central R. R.*, 128 N. C. 280.

Same—Interpretation—Exemption clause:—A clause in a bill of lading that the goods will be shipped, "at the convenience of the company" will not protect it from liability for an unreasonable delay. *Branch & Pope v. Wilmington & W. R. R. Co.*, 88 N. C. 573.

Same—Agency—Parol:—A common carrier is not bound by a bill of lading issued by its agent unless the goods be actually received for shipment; and the principal is not estopped thereby from showing, by parol, that no goods were in fact received, *although the bill has been transferred to a bona fide holder for value. Williams, Black & Co.*, v. *The Wilmington & W. R. R. Co.*, 93 N. C. 42; *Brown v. Brooks*, 7 Jones, 93, and *Smith* v. *Brown*, 3 Hawks, 580.

U.

Charter provisions—Exclusive privileges unconstitutional:—A provision in a charter of a warehouse corporation to the effect that such corporation shall not be liable for loss or damages not

provided for in its warehouse receipt or contract, attempts to confer exclusive privileges and is therefore unconstitutional and void. *Motley & Co.* v. *Southern Finishing & Warehouse Co.*, 122 N. C. 347.

Same—Same—Illustration:—The clause of the character of the defendant company which reads as follows: "Provided, however, that said company shall not be held responsible for losses arising from the act of God, or of common enemies, nor for any loss or damage not provided for in its warehouse receipt or contract; and said company may make such stipulations in its warehouse receipts or contracts, as to loss or damage ensuing by fire or other cause, as it may deem necessary and proper" is in contravention of art. 1, sec. 7, of the constitution. *Motley & Co.* v. *Southern Finishing & Warehouse Co.*, 124 N. C. 232.

Taxation:—A packing company doing business within the state liable to $100 state tax. Taxing Statute Constitutional:— Facts considered and defendant held to be "doing business" within the state as a meat packing house; that Sec. 56, ch. 247, Laws of 1903 is valid and constitutional, and that defendant is liable for $100 tax. *Lacy* v. *Armour Packing Co.*, 134 N. C. 567, affirmed 200 U. S. 226.

CHAPTER XXXIV.

NORTH DAKOTA

LAWS PERTAINING TO WAREHOUSEMEN.

Public warehouses—Commissioners of railroad, powers and duties:—The duties imposed by the provisions of this article and the powers conferred herein devolve upon the commissioners of railroads. Revised Code, North Dakota, 1905, sec. 2241.

Commissioners of railroads—Duties:—It shall be the duty of commissioners of railroads to supervise the handling, weighing and storing of grain and seed; to establish all necessary rules and regulations for the weighing of grain and for the management of public warehouses of the state, so far as such rules and regulations may be necessary to enforce the provisions of this article or any law in this state in regard to the same; investigate all complaints of fraud or oppression in the grain trade of this state, and correct the same. They shall revoke the license of any warehouse for cause upon notice and hearing. *Id.* sec. 2242, as amended by Act approved March 12, 1909, Laws N. Dak., 1909, c. 230, p. 333.

Rules to be published:—The rules and regulations so established shall be printed and published by the commissioners of railroads in such manner as to give the greatest publicity thereto, and the same shall be in force and effect until they are changed or abrogated by such commissioners in a like public manner. Revised Code, North Dakota, 1905, sec. 2243.

Public warehouses defined:—All buildings, elevators and warehouses, and all grist and flour mills doing a shipping business in this state, erected and operated, or which may hereafter be erected or operated by any person, association, copartnership, corporation or trust, for the purposes of buying, selling, storing, shipping or handling grain for profit, are declared public warehouses, and the person, association, copartnership or corporation owning or operating such buildings, elevators or ware-

houses, which are now, or may hereafter be located or doing business within this state, whether such owners or operators reside within this state or not, are public warehousemen within the meaning of this article, and none of the provisions of this article shall be construed so as to permit discrimination with reference to buying, receiving and handling grain of standard grades or in regard to the persons offering such grain for sale, storage and handling, at such public warehouses, while the same are in operation. *Id.* 2244.

Above section construed:—Does not apply to those engaged strictly in a milling business. *Ex parte Bellamy*, 114 N. W. 376. See section 2251.

License, how obtained—Fee, how determined:—A biennial state license must be maintained through the commissioners of railroads to expire on the first day of August of each odd numbered year and for each and every public grain warehouse in operation in this state. No license issued under this article shall describe more than one public grain warehouse, or grant permission to operate any other public grain warehouse, than the one therein described. The license fee is hereby fixed at eight dollars for warehouses of a capacity of twelve thousand bushels or less, and ten dollars for warehouses of a capacity of over twelve thousand bushels and not to exceed twenty-five thousand bushels, and twelve dollars for all warehouses over twenty-five thousand bushels and not to exceed fifty thousand bushels, and twenty dollars for all warehouses over fifty thousand bushels and not to exceed eighty thousand bushels, and twenty-five dollars for all warehouses over eighty thousand bushels capacity for each public grain warehouse; provided, that before any license is issued the person applying therefore shall file with the commissioners of railroads the receipt of the state treasurer showing that the applicant has paid into the state treasury the amount of said license fee. Revised Code North Dakota, 1905. *Id.* sec. 2245. as amended by Act approved March 19, 1907, Laws N. Dak., 1907, c. 112, p. 167.

License to be conspicuously posted—Penalty:—The license thus obtained shall be posted in a conspicuous place in the public warehouse so licensed. Every such license shall expire on the first day of August next following the issuance thereof, and no license shall run for a longer period than one year. Any person

or association, who shall transact the business of public warehouseman without first procuring a license as herein provided, shall on conviction, be fined in a sum not less than twenty-five dollars for each and every day such business is carried on. Revised Code North Dakota, 1905, sec. 2246.

Bond to be filed:—The proprietor, lessee or manager of any warehouse or elevator in this state shall file with the commissioners of railroads a bond to the state with good and sufficient sureties to be approved by such commissioners in the penal sum of not less than five thousand nor more than seventy-five thousand dollars, in the discretion of the commissioners, conditioned for the faithful performance of their duty as public warehousemen and a compliance with all the laws of this state in relation thereto. One bond only need be given for any line of elevators or warehouses owned, controlled or operated by one individual, firm or corporation. Such bond, specifying the location of each elevator or warehouse operated by such individual, firm or corporation, shall be in a sufficient amount to protect the holders of outstanding tickets. *Id.* sec. 2247.

Above Section construed—What complaint must show—Parties:—Where suit is brought upon the bond required by this section the complaint must show that such action is brought on behalf of all the holders of storage tickets upon which default has been made. The better procedure is to bring the action in the name of the state for the benefit of such ticket holders. An action by one of such ticket holders in own individual name will not lie. *Phillips* v. *Semingson et al.*, 142 N. W. 47.

Warehouse receipts, what to contain:—All owners of such elevators and warehouses shall, upon the request of any person delivering grain thereat, give a warehouse receipt therefor, subject to the order of the owner or consignee, which receipt shall bear date corresponding with the receipt of the grain, and shall state upon its face the quantity and grade [fixed] upon the same. All warehouse receipts shall be consecutively numbered, and no two receipts bearing the same number and series shall be issued during the same year. No warehouse receipt shall be issued except upon the actual delivery of grain into such warehouse. No such warehouseman shall insert in any warehouse receipt issued by him any language in anywise limiting or modifying his

liabilities as imposed by the laws of this state. Revised Code, North Dakota, 1905, sec. 2248.

Above section construed:—This section refers merely to the issuance of warehouse receipts for grain delivered in the elevator or warehouse. *State* v. *Robb-Lawrence Co.*, 115 N. W. 846.

What storage receipts shall express:—Each storage receipt issued in this state shall expressly provide that at the option of the holder of such receipt the kind, quality and quantity of grain for which such grain was issued shall be on his demand, delivered back to him, at any terminal point, or at the same place where it was received upon the payment of a reasonable charge per bushel for receiving, handling, storage, and insurance charges; and in case of terminal delivery the payment, in addition to the above, of the regular freight charges on the gross amount called for by the tickets being surrendered—such charges to be fixed by express terms in the storage receipt at the time of receiving the grain at the elevator or warehouse, and at the time of issuing the receipt, but no charges shall be made for cleaning grain unless such grain has been actually cleaned. Nothing in this section shall be construed to require the delivery of the identical grain specified in the receipt so presented, but an equal amount of the same grade of grain or in lieu thereof a receipt issued by a bonded warehouse or elevator company doing business at terminal points, for an equal amount of grain of the same grade; provided, that grain placed in a special bin be excepted from the provisions of the section. Revised Code, North Dakota, 1905, sec. 2248.

Bailment, not a sale—Insolvency:—Whenever any grain shall be delivered to any person, association, firm or corporation doing a grain, warehouse or grain elevator business in this state and the receipt issued therefor provides for the delivery of a like amount and grade to the holder thereof in return, such delivery shall be a bailment and not a sale of the grain so delivered, and in no case shall the grain so stored be liable to seizure upon process of any court in an action against such bailee, except actions by owners of such warehouse receipts to enforce the terms thereof, but such grain shall at all times in the event of the failure or insolvency of such bailee be first applied exclusively to the redemption of outstanding warehouse receipts for grain so stored

with such bailee. And in such event grain on hand in any particular elevator or warehouse shall first be applied to the redemption and satisfaction of receipts issued by such warehouse. *Id.* sec. 2250.

Larceny—Punishment:—Each person and each member of any association, firm or corporation doing a grain warehouse or grain elevator business in this state, who shall after demand, tender and offer as provided in the last section, willfully neglect or refuse to deliver to the person making such demand, the full amount of grain of the grade or the market value thereof which such person is entitled to demand of such bailee, shall be deemed guilty of larceny. *Id.* sec. 2251.

Above section construed:—Petition for writ of habeas corpus. The petitioner, an officer of a corporation engaged in the business of purchasing wheat and manufacturing flour for sale, was held for larceny under section 2251. *Held:* that he was not "doing a grain, warehouse or grain elevator business," nor was he "engaged in doing a shipping business." That section 2251 relates only to those engaged in the business mentioned in sec. 2244 and was designed to create the relation of bailor and bailee between persons delivering and receiving grain for storage and shipment, and to make guilty of larceny such bailees who wilfully neglect or refuse to deliver on demand the grain thus bailed or its equivalent. The section is not intended to apply to persons engaged strictly in a milling business. *Ex parte Bellamy,* 114 N. W. 376.

Rates of storage:—The charges for storage and handling of grain shall not exceed the following rates: For receiving, elevating, insuring, delivering and twenty days' storage, two cents per bushel. Storage rates after the first twenty days, one-half cent for each fifteen days or fraction thereof, and not exceeding five cents for six months. The grain shall be kept insured at the expense of the warehouseman for the benefit of the owner. Revised Code, North Dakota, 1905, sec. 2252.

Section constitutional:—The above section *held* constitutional in *North Dakota ex rel. Stoeser* v. *Brass,* 2 N. D. 482, aff'd 153 U. S. 391. See North Dakota decisions, page —.

Penalty for violation of this article:—Any person who shall knowingly cheat, or falsely weigh any wheat or other agricultural

products, or who shall violate any of the provisions of this article shall be deemed guilty of a misdemeanor, and shall on conviction thereof be subject to a fine of not less than two hundred dollars nor more than one thousand dollars and be imprisoned in the penitentiary for a period not exceeding one year, in the discretion of the court. Revised Code, North Dakota, 1905, sec. 2253.

Warehouse on railroad right of way—Application:—Any person, firm or corporation desirous of erecting and operating at or contiguous to any railway station or siding a warehouse or elevator for the purchase, sale, shipment or storage of grain for the public for hire may make application in writing, containing a description of that portion of the right of way of said railroad on which said person, firm or corporation desires to erect a warehouse or elevator, and the size and capacity of the warehouse or elevator proposed to be erected and the time for which it is desired to maintain said warehouse or elevator, to the person, firm or corporation owning, leasing or operating the railway, at such station or siding for the right, privilege and easement of erecting and maintaining for the time stated in said application, and for reasonable compensation such warehouse or elevator as aforesaid, upon the right of way appertaining to such railway at such siding or station, and within and between the outside switches of the yard of such railway station or siding and upon paying or securing in the manner hereinafter prescribed reasonable compensation for the right, privilege and easement aforesaid, shall absolutely and unconditionally be entitled to the same. *Id.* sec. 2254.

Compensation—Notice to applicant:—The application provided in section 2254 shall also state the amount the applicant deems a reasonable compensation for the right, privilege and easement he desires to acquire, and said applicant shall tender and pay to such person, firm or corporation, from whom such easement is sought, the sum stated in such application, and in case the amount so named and tendered is not accepted, and the parties cannot agree on the amount to be paid for such right, privilege and easement, the same shall be ascertained, assessed and determined by proceedings in the district court of the county in which the station or siding at which the right, privilege and easement sought is situated, which court is hereby given full jurisdiction in the premises, and shall at all times be deemed open

and in session for the purposes of this article. It shall be the duty of any person, firm or corporation to whom application is made for the right to erect and maintain an elevator or warehouse under the provisons of this article, to within ten days after the receipt of said application notify said applicant in writing of the acceptance or rejection of the amount stated in said application to be reasonable compensation for the right, privilege and easement sought to be acquired, and in case said person, firm or corporation fails to notify the applicant within said ten days, said person, firm or corporation shall be deemed to have accepted said amount, and upon payment or tender thereof said applicant shall be deemed to have acquired the right, privilege and easement applied for. *Id.* sec. 2255.

Procedure in district court:—Proceedings in the district court shall be instituted and carried on as follows: The party seeking the right, privilege and easement aforesaid shall present to and file with the district court a petition in writing and under oath specifying and describing the right, privilege and easement sought and the time for which the same is sought and the fact that the parties to the proceedings are unable to agree upon the amount of compensation therefor. A copy of the application for such privilege shall be attached to said petition and thereupon it shall at once be the duty of the court, by its order in writing, to fix upon a place and a time not more than thirty days thereafter where and when the court will try, ascertain, assess and determine the amount of such compensation; a certified copy of which order at least twenty days before the time so fixed upon, shall be served upon the party from whom the right, privilege and easement is sought, as summons are served in civil actions of said court, and such service when made shall be ample notice to and summons for the party so served to appear and join in the proceedings and shall be ample to give the court full jurisdiction over the party against whom the proceedings are instituted and the property involved in the proceedings. *Id.* sec. 2256.

Trial—Election of gross sum or annual rental—Writ:—At the time and place so fixed for ascertaining, assessing and determining the compensation aforesaid, the court shall immediately proceed to try said matter, without a jury, if the parties consent, and if they do not consent and if the time and place fixed

for said hearing is at a general or special term of said court where a petit jury has been summoned, the court shall proceed to a hearing of such matter with a jury selected and sworn from the panel present at such term, in the same manner as jurors are selected and sworn from the panel present at such term, in the same manner as jurors are selected in civil actions, and if the regular panel is exhausted before a jury is secured, talesmen may be summoned. In case said proceedings are made returnable at any other time than at a term where a petit jury shall have been summoned, the court shall make an order requiring the selection of twenty-four jurors from those returned by the county commissioners, which jury shall be drawn and selected in the same manner as provided by law for the drawing of jurors for general terms of the district court, and from the jurors so returned, a jury shall be selected the same as in civil actions and the trial shall proceed after the manner of trials in civil actions, and the court or jury, as the case may be, shall find and assess compensation both in the form of an annual rental and in the form of a gross sum for the right, privilege and easement sought, and immediately after the finding or verdict has been made the party against whom the proceedings have been taken shall elect whether to receive the annual rental or the gross sum found, and in case such election is not made by this party, then the other party to the proceedings may make such election, and after election is made as aforesaid, judgment shall be rendered adjudging, among other things, that upon payment of the gross sum found or the annual rental found, yearly in advance, as the case may be, the party instituting the proceedings shall be entitled to the right, privilege and easement of erecting and maintaining the elevator or warehouse asked for in the application and petition aforesaid, and for the time therein specified; and thereupon the party in whose favor said judgment is rendered shall be entitled to a writ of execution in proper form to immediately invest such party with the right, privilege and easement aforesaid. *Id.* sec. 2257.

Forfeiture—Appeal—Costs:—In case the annual rental is elected the same shall be paid, yearly in advance, and if not so paid after thirty days' default the right, privilege and easement aforesaid shall be absolutely forfeited. Within thirty days after the entry of said judgment as hereinbefore provided, but not

later, an appeal may be taken by either party to the supreme court, but such appeal shall not stay or hinder the use or enjoyment to the fullest extent of the right, privilege and easement asked for by the petition and conferred by the judgment, if the party instituting the proceedings shall make and file a bond with sureties, to be approved by the court, in an amount double the gross sum or annual rental, conditioned to pay such sum or rental and to abide and satisfy any judgment the supreme court may render in the premises. Costs and disbursements as in civil actions shall, in each court, be paid by the unsuccessful party. If the finding of the court or jury is for a less or the same amount as tendered by the petitioner before instituting the proceedings, then the petitioner shall be deemed the successful party; but if the amount found is larger than the sum tendered, then the petitioner shall be deemed the unsuccessful party. In the supreme court, if the judgment or order appealed from is reversed or modified, the appellant shall be deemed the successful party; but if the judgment or order appealed from is affirmed, the respondent shall be deemed the successful party. *Id.* sec. 2258.

Warehouses deemed public—Open, when:—All elevators and warehouses erected and maintained under the provisions of this article, shall be deemed public elevators and public warehouses and shall be subject to legislative control and shall be kept open for business for the public for reasonable business hours from the fifteenth day of September in each calendar year to the fifteenth day of January in each succeeding calendar year. Any person, firm or corporation who fails to comply with the provisions of this section shall forfeit the rights, privileges and easements acquired under this article. *Id.* sec. 2259.

Erection of warehouses:—Any persons, firms or corporations availing themselves of the provisions of this article shall within sixty days after the amount to be paid for the easement acquired thereunder is finally determined, by agreement or by proceedings in court, commence the erection of the warehouse or elevator stated in the application referred to in section 2254 and complete the same within ninety days thereafter, and in case of failure to comply with the provisions of this section they shall be deemed to have abandoned the right, privilege and easement acquired, and the part or portion of the railroad right

of way described in their application shall be subject to selection by other applicants who may desire to avail themselves of the provisions of this article. *Id.* sec. 2260.

Side tracks provided by railroad company:—Every railroad company or corporation organized under the laws of this state, or doing business therein, shall upon application in writing provide reasonable side track facilities and running connections between its main track and elevators and warehouses upon or contiguous to its right of way at such stations; and every such railroad corporation shall permit connections to be made and maintained in a reasonable manner with its side tracks to and from any warehouse or elevator without reference to its size, cost or capacity, where grain is or may be stored; provided, that such railroad company shall not be required to construct or furnish any side tracks except upon its own land or right of way; provided, further, that such elevators and warehouses shall not be constructed within one hundred feet of any existing structure and shall be at a safe fire distance from the station buildings and so as not essentially to conflict with the safe and convenient operation of the road; and where stations are ten miles or more apart the railroad company when required so to do by the commissioners of railroads shall construct and maintain a side track for the use of shippers between such stations. *Id.* sec. 2261.

License Keepers of Public Warehouses:—The board of railroad commissioners may license any suitable person, persons, or corporations established under the laws of this state, and having their place or places of business within this state, to carry on business of public storage companies or public warehousemen, who may keep and maintain public warehouses for the storage of goods, wares and merchandise, etc., excepting grain in bulk. Said license may be obtained upon the payment annually into the treasury of the state of the sum of ten dollars, to be credited to the general fund of the state. *Id.* Sec. 2262, as amended by Act approved March 12, 1913, Laws North Dakota, 1913, Chap. 239, page 383.

Bonds:—Each person or corporation licensed under Section 2262 shall give a bond to the Treasurer of the State, in the penal sum of five thousand dollars, with good and sufficient sureties to be approved by the board of railroad commissioners,

for the faithful discharge of the duties of a public warehouseman. Id. Sec. 2263 as amended by above mentioned Act of March 12, 1913.

Subject to Action in Name of State:—When any one licensed to do business as a public storage company or as a public warehouseman fails to perform his duty, or violates any of the provisions of this Article, any person, persons or corporations injured by such failure or violation may, with the consent of the board of railroad commissioners and the Attorney General, bring an action in the name of the state, but to his or their own use, in any court of competent jurisdiction, on the bond of such company or warehouseman. In such action the person, persons or corporation in whose behalf the action is brought shall file with the court a satisfactory bond for costs, and the state shall not be liable for any costs. *Id.* Sec. 2264 as amended by above mentioned Act of March 12, 1913.

Insuring property stored:—Every public storage company or warehouseman shall when requested thereto in writing by any party placing property with him in storage, cause such property to be insured for whom it may concern; and such storage company or warehouseman shall not be held liable for the loss or damage by fire to the owner or owners of any property stored with him, unless such request to insure is made as aforesaid and he or they fail to comply therewith; provided, that such loss or damage is not occasioned through the negligence of himself, his agents, servants, or employes; provided, that such storage company or warehouseman may, in case they deem it necessary and proper, insure such property without such request, in writing, in which event the cost of such insurance shall be and become a valid lien and charge thereon as provided in section 2269. Revised Code, North Dakota, 1905, sec. 2265.

Title of goods stored:—The title of goods and chattels stored with a public storage company or in a public warehouse shall pass to a purchaser, or pledgee, by the indorsement and delivery to him of the storage company's or warehouseman's negotiable receipt therefor, signed by the party to whom such receipt was originally given, or by an indorsee of such receipt, subject to all liens and charges thereon for warehousing, advanced charges and insurance. *Id.* sec. 2266.

Above section construed:—The assignment and delivery of storage tickets unconditionally passes the title to the property and to the storage tickets to the person to whom they are delivered. *St. Anthony & Dakota Elevator Co. v. Dawson & Byfield*, 126 N. W. 1013, 1015.

Storage charges—No discrimination:—Every such storage company or warehouseman shall receive, forward and store all property offered for such purposes by any person, persons or corporation, impartially and at as low a rate of charge, and in a manner and on terms, and in quantities as favorable to the party offering such property as it or he at the same place receives, forwards and stores, in the ordinary course of business, property of like description and in similar quantities offered by any other person, persons or corporation. No such storage company or warehouseman shall discriminate against any particular person, persons or corporation, or subject them or him to any undue and unreasonable prejudice or disadvantage. Any court having jurisdiction shall have power to enforce the provisions of this article by injunction, or other suitable process. Revised Code, North Dakota, 1905, sec. 2267.

Penalty—Every such storage company or warehouseman who neglects or refuses to comply with the provisions of section 2267 shall forfeit, for every such offense, not less than fifty nor more than five hundred dollars, to be recovered in an action by the party offering the property for storage. *Id.* sec. 2268.

Lien thereon:—Every such storage company or warehouseman who stores, keeps, cares for, or advances money on, or insures personal property, shall have a lien thereon for his reasonable charges for storing, keeping, caring for, and insuring the same, and for the charges he may have advanced on the same and legal interest thereon. *Id.* sec. 2269.

Unlawful without license:—It shall be unlawful for any person, persons or corporation, not duly licensed as herein provided, to conduct or carry on the business of a public storage company or public warehouseman in the state. *Id.* sec. 2270.

Guilty of misdemeanor—Punishment:—Any person, persons or corporation who shall violate the provisions of this article shall be deemed guilty of a misdemeanor, and shall be pun-

ishable by a fine of not exceeding one thousand dollars. *Id.* sec. 2271.

To Whom Applied:—This article shall not be construed to apply to any implement transfer company, or to any railroad or transportation company; provided, such railroad or transportation company shall, within forty-eight hours after receipt of such goods, wares and merchandise, notify the consignee of the arrival thereof in writing, and in case such consignee, or his assigns, fails and neglects to call for or receive said goods, wares or merchandise within thirty days after such receipt of same by any railroad or transportation company as aforesaid, said railroad or transportation company must then turn over said goods, wares or merchandise to a licensed bonded storage company or warehouseman in the city, town or village in which said goods, wares or merchandise are then located, if any there be, and if not, to the licensed bonded storage company or warehouseman in the city, town or village on the line of the carrier nearest to the place where such goods, wares or merchandise are then located, upon the payment of the charges of said carrier thereon, which charges thus paid by said bonded storage company or warehouseman to said carriers shall be a lien on said goods, wares or merchandise. *Id.* Sec. 2272 as amended by Act approved March 11, 1913, Laws North Dakota, 1913, Chap. 235, page 378.

Governor appoints member, when—Term of office—Salary: The governor of this state shall, within sixty days after receipt by him of a request by the governor of the state of Wisconsin so to do, recommend one or more persons who shall have had at least five years' experience in the handling or grading of grain, for appointment upon the grain and warehouse commission for the city of Superior, Wisconsin, and shall, within said period, forward to the governor of the state of Wisconsin, the name or names of the person or persons so recommended. Revised Code, North Dakota 1905, sec. 2273.

Term of office—Salary:—The person appointed by the governor of Wisconsin, if he has been recommended by the governor of North Dakota, shall be paid the sum of three hundred dollars per annum from the date of his appointment for the period of two years, which shall be in addition to all sums paid him under the laws of the state of Wisconsin. *Id.* sec. 2274.

Warehouse receipts — Fraudulent — Punishment: — Every person carrying on the business of a warehouseman, wharfinger or other depositary of property, who issues any receipt, bill of lading or other voucher for any merchandise of any description which has not been actually received upon the premises of such person, and is not under his actual control at the time of issuing such instrument, whether such instrument is issued to a person as being the owner of such merchandise or as security for any indebtedness, is punishable by imprisonment in the penitentiary not less than one and not exceeding five years, or by a fine not exceeding one thousand dollars or both. *Id.* sec. 9300.

Same—Exceptions:—No person can be convicted of any offense under the last two sections by reason that the contents of any barrel, box, case, cask or other vessel or package mentioned in the bill of lading, receipt or other voucher, did not correspond with the description given in such instrument of the merchandise received, if such description corresponded substantially with the marks, labels or brands upon the outside of such vessel or package, unless it appears that the accused knew that such marks, labels or brands were untrue. *Id.* sec. 9301.

Warehouse receipt—Duplicate:—Every person mentioned in sections 9299 and 9300, who issues any second or duplicate receipt, or voucher, of a kind specified in those sections, at a time while any former receipt or voucher for the merchandise specified in such second receipt is outstanding and uncanceled, without writing across the face of the same the word "duplicate," in a plain and legible manner, is punishable by imprisonment in the penitentiary not less than one and not exceeding five years, or by a fine not exceeding one thousand dollars, or both. *Id.* sec. 9302.

Storage—Defined:—A deposit not gratuitous is called storage. This depositary in such case is called a depositary for hire. *Id.* sec. 5471.

Must use ordinary care:—A depositary for hire must use at least ordinary care for the preservation of the thing deposited. *Id.* sec. 5472

Right to compensation:—In the absence of a different agreement or usuage a depositary for hire is entitled to one week's

hire for the sustenance and shelter of living animals during any fraction of a week and to half a month's hire for the storage of any other property during any fraction of a half month. *Id.* sec. 5473.

Termination of deposit:—In the absence of an agreement as to the length of time during which a deposit is to continue it may be terminated by the depositor at any time and by the depositary upon reasonable notice. *Id.* sec. 5474.

Same—Payment for full time:—Notwithstanding an agreement respecting the length of time during which a deposit is to continue, it may be terminated by the depositor on paying all that would become due to the depositary in case of the deposit so continuing. *Id.* sec. 5475.

AN ACT to Provide for Owners and Managers of Elevators and Warehouses to Make Annual Reports to the Commissioner of Agriculture and Labor.

Be it Enacted by the Legislative Assembly of the State of North Dakota:

SECTION 1. *Report of grain shipments:*—The owner, agent or operator of every elevator, warehouse or grain station shall make an annual sworn statement and report to the commissioner of agriculture and labor on or before the twentieth day of August in each year. Such report shall show the amount and kind of grain bought and shipped during the preceding year ending July 30.

SEC. 2. *Report of track or independent buyers:*—Every station agent of every railroad shall report to the commissioner of agriculture and labor annually as provided in the preceding section, the amount of grain shipped by independent or track buyers or by other individuals not the owners or operators of any warehouse or elevator at his station.

SEC. 3. *Commissioner of agriculture furnishes blanks:*—It shall be the duty of the commissioner of agriculture and labor to furnish all persons required to make the reports provided for in this act with the necessary and appropriate blanks on which to make and return such report.

Approved March 19, 1907. Laws, North Dakota, 1907, c. 111, p. 166.

AN ACT Requiring Elevator Companies Transacting Business in this State to Return Certificate of Inspection and Weighmaster's Certificate of Weight to the Local Buyer.

Be it Enacted by the Legislative Assembly of the State of North Dakota:

SECTION 1. *Requiring the return of certificate of weight and inspection:*—Every elevator company, corporation, co-partnership or association of individuals, operating any elevator, building or place in this state for the purchase, storage or deposit of any grain or other farm commodity, shall return to the local buyer at the place where such grain or other farm commodity is purchased, stored or deposited, the official certificate of inspection, together with the weighmaster's certificate for any such grain or other farm commodity sold, whether said grain is sold in this state or in any foreign state where such grain is weighed and inspected.

Sec. 2. *Duty of agent or local buyer:*—It shall be the duty of the local buyer or agent of the elevator company or other association enumerated in section one of this act, to post in a conspicuous place in such elevator building or place, the official weighmaster's certificate and the official inspector's certificate, and have the same at all times so that the public may inspect the same.

Sec. 3. *When certificates are to be returned:*—The elevator company or other association enumerated in section one of this act, shall forthwith upon the sale of each car or part of car of grain or other farm commodity, return the certificates provided for in this act.

Sec. 4. *Penalty:*—Any elevator company, corporation, co-partnership, or other association of individuals, or any person who shall violate any of the provisions of this act, shall be guilty of a misdemeanor and all right to transact any business in this state shall be forfeited.

Sec. 5. *Repeal:*—All acts and parts of acts in conflict with this act are hereby repealed.

Sec. 6. *Emergency:*—Whereas, an emergency exists in that there is no valid law regulating the matters set forth in this act,

this act shall take effect and be in force from and after its passage and approval.

Approved March 12, 1907. *Id.* c. 113, pp. 167 and 168.

An Act Relating to Cold Storage and Refrigerating Warehouses, the Disposition or Sale of the Food Kept or Preserved Therein, and Defining the Duties of the Food Commissioner of the North Dakota Government Agricultural Experiment Station in Relation Thereto and Providing Penalties for the Violation Thereof.

Be it Enacted by the Legislative Assembly of the State of North Dakota:

SECTION 1. The term "cold storage" as used in this Act shall be construed to mean a place artificially cooled to a temperature of 40 degrees F. or below, but shall not include such a place in a private home, hotel, or restaurant, or refrigerator cars.

The term "cold stored" as used in this Act shall be construed to mean the keeping of "articles of food" in "cold storage" for a period exceeding thirty days.

The term "articles of food" as used in this Act shall be construed to mean and include fresh meat, and fresh meat products, except in process of manufacture, fresh food, fish, game, poultry, eggs and butter.

SEC. 2. Any person, firm or corporation desiring to operate a public cold storage or refrigerating warehouse, shall make application in writing to the food commissioner of the experiment station at Fargo for that purpose, stating the location of its plant or plants. On receipt of the application the food commissioner shall cause an examination to be made into the sanitary condition of said plant or plants, and if found to be in a sanitary condition and otherwise properly equipped for the business of cold storage, the food commissioner shall cause a license to be issued authorizing the applicant to operate a cold storage or refrigerating warehouse for and during the period of one year. The license shall be issued upon payment by the applicant of a license fee of ten dollars ($10.00) to the food commissioner.

SEC. 3. In the event that any place or places, or any part thereof, covered by a license, under the provisions of this Act, shall at any time be deemed by the food commissioner to be in an unsanitary condition, it shall be the duty of the food com-

missioner to notify licensee of such condition, and upon the failure of the licensee to put said specified place or places, or the specified part thereof, in a sanitary condition within a designated time, it shall be the duty of the food commissioner to prohibit the use under its license such specified place or places, or part thereof, as he deems in an unsanitary condition until such time as it may be put in a sanitary condition.

SEC. 4. It shall be the duty of any person, firm or corporation licensed to operate a cold storage or refrigerating warehouse, to keep an accurate record of the receipts and the withdrawals of the articles of food, and the food commissioner shall have free access to these records at any time. Every such person, firm or corporation shall, furthermore, submit a quarterly report to the food commissioner, setting forth in itemized particular the quantity of food products held in cold storage. Such quarterly reports shall be filed on or before the 6th of January, April, July and October of each year, and the reports so rendered shall show the conditions existing on the first day of the month in which the report is filed. The food commissioner shall have the authority to require such reports to be made at more frequent intervals than the times herein specified, if in the judgment of the food commissioner more frequent reports shall be needed in the interest of a proper enforcement of this Act, or for other reasons affecting the public welfare.

SEC. 5. No article of food intended for human consumption shall be placed in cold storage if diseased or tainted or deteriorated so as to injure its keeping qualities, or if not slaughtered, handled and prepared for storage in accordance with the pure food and sanitary laws and such rules and regulations as may be prescribed by the food commissioner for the sanitary preparation of food products for cold storage, under the authority hereinafter conferred. Any article of food if intended for use other than human consumption before being cold stored shall be marked by the owner in accordance with forms prescribed by the food commissioner (under authority hereinafter conferred) in such a way as to plainly indicate the fact that such articles are not to be sold for human food.

SEC. 6. It shall be the duty of the food commissioner to inspect and supervise all cold storage or refrigerating warehouses in this state, and to make such inspection of the entry of articles

of food therein as the food commissioner may deem necessary to secure proper enforcement of this Act. The food commissioner, or his duly authorized agents, inspectors or employees, shall be permitted access to such establishments, and all parts thereof, at all reasonable times for purposes of inspection and enforcement of the provisions of this Act. The said food commissioner may also appoint and designate such person or persons as he deems qualified to make the inspections herein required.

SEC. 7. All articles of food when deposited in cold storage shall be marked plainly on the containers in which they are packed or on or in connection with the individual articles with the date of receipt, and when removed from cold storage shall be marked with the date of withdrawal, in accordance with such forms as may be prescribed by the food commissioner, under the authority hereinafter conferred.

SEC. 8. No person, firm or corporation,, as owners or having control, shall keep in cold storage any article of food for a longer period than twelve calendar months, except with the consent of the food commissioner, as hereinafter provided. The food commissioner may, upon application, grant permission to extend the period of storage beyond twelve months for a particular consignment of goods, if the goods in question are found, upon examination, to be in proper condition for further storage at the end of twelve months. The length of time for which further storage is allowed shall be specified in the order granting the permission. A report on each case in which such extension of storage may be permitted, including information relating to the reason for the action of the food commissioner, the kind and amount of goods for which the storage period was extended, and the length of time for which the continuance was granted, shall be included in the annual report of the food commissioner.

SEC. 9. It shall be unlawful to sell, or to offer or expose for sale, uncooked articles of food which have been held in cold storage without notifying persons purchasing, or intending to purchase, the same, that they have been so kept, by the display of a sign marked "Cold Storage Goods Sold Here," and it shall be unlawful to represent or advertise as fresh goods articles of food which have been held in cold storage.

SEC. 10. It shall be unlawful to return to cold storage any article of food that has once been released from such storage and

placed on the market for sale to consumers, but nothing in this section shall be construed to prevent the transfer of goods from one cold storage or refrigerating warehouse to another, provided that such transfer is not made for the purpose of evading any provision of this Act.

SEC. 11. The food commissioner may make rules and regulations to secure a proper enforcement of the provisions of this Act, including rules and regulations with respect to the sanitary preparation of articles of food for cold storage, the use of marks, tags, or labels, and the display of signs, and the violation of such rules shall be punished, on conviction, as provided in Section 12 of this Act.

SEC. 12. Any person, firm or corporation violating any of the provisions of this Act shall, upon conviction, be punished for the first offense by a fine of not less than ten ($10.00) dollars and not more than one hundred ($100.00) dollars, and for the second offense by a fine of not less than fifty ($50.00) dollars nor more than five hundred ($500.00) dollars, or by imprisonment for not more than thirty days, or by such fine and imprisonment.

SEC. 13. *What constitutes violation of the law:*—The doing of anything prohibited by this Act shall be evidence of the violation of the provisions of this Act relating to the things so prohibited, and the omission to do anything directed to be done shall be evidence of a violation of the provisions of this Act relative to the things so directed to be done.

SEC. 14. All Acts and parts of Acts conflicting with the provisions of this statute are hereby repealed.

Approved March 12, 1913, Laws North Dakota, 1913, Chap. 94, page 116.

An Act to Require Public Warehouses to First Clean a Sample of any Grain Before Testing for the Grade of Such Grain, and Providing a Penalty for the Violation of This Act.

Be it Enacted by the Legislative Assembly of the State of North Dakota:

SEC. 1. *Grading of Grain:*—All public warehouses within this state, as defined by Section 2244 of the Revised Codes of North Dakota for 1905, when requested by the seller, shall, before test-

ing for grade any grain handled by them, remove therefrom and make due allowance for any dockage of such grain made by reason of the presence of straw, weed seeds, dirt or any other foreign matter. Such test shall be made by taking a fair sample of such grain and cleaning the same before testing for the grade of such grain. And no public warehouse within this state, as defined in Section 2244 of the Revised Codes of 1905, shall grade any grain offered to it for sale in this state, after such request has been made until due allowance has been made for such dockage and such dockage has been deducted or removed from such grain; and, when such dockage has been removed, deducted or allowance made for the same by such public warehouse, such warehouse shall proceed to test such grain for grade and shall grade the same as if such dockage had been removed, deducted or allowance made therefore as provided herein.

SEC. 2. *Misdemeanor—Penalty for Violation:*—Any person, association, co-partnership or corporation, or the agent of any person, association co-partnership or corporation owning, operating or conducting the business of a public warehouse, in this state, who shall violate any of the provisions of this act shall be guilty of a misdemeanor and shall be punished by a fine of not less than ten dollars nor more than one hundred dollars or by imprisonment in the county jail not less than ten nor more than thirty days or both such fine and imprisonment. Approved March 12, 1913, Laws North Dakota 1913, Chap. 176, page 252.

DECISIONS AFFECTING WAREHOUSEMEN

A.

Bailment—The mingling of wheat with other of a like quality:—The plaintiff, the owner of wheat, deposited the same with the defendant, a warehouseman. It appears under the warehouse receipts and the statutes pertaining thereto that plaintiff was not entitled to demand the delivery of the identical wheat stored. It was *held* that this constitutes a contract of bailment and not a sale. *Marshall* v. *Andrews & Gage*, 8 N. D. 364.

Same—Surrender of cash tickets to grain elevator constitutes a sale with implied warranty of title:—Action for damages for breach of implied warranty of title. The owner of a crop of wheat mortgaged it as a growing crop which mortgage was duly

recorded. Afterward he executed two other mortgages thereon to defendants. The wheat was delivered to plaintiff, an elevator company, who issued storage tickets in the name of the owner, who endorsed and delivered them to defendants. Defendants exchanged these tickets for cash tickets which were afterward paid by the elevator company in cash. Plaintiffs unsuccessfully defended an action against it by the first mortgagee. *Held:* that the delivery of the wheat to the elevator company was a bailment and that title remained in the owner. That the assignment and delivery of the tickets by the owner to the defendants passed the title thereto and that presenting the storage tickets to and receiving he money from the elevator company constituted a sale of the wheat to the elevator company, and that there was an implied warranty of title. That plaintiff was entitled to recover the amount of the judgment of the first mortgagee, with costs, interest and $150 attorney's fee for defending that suit. *St. Anthony & Dak. Elevator Co.* v. *Dawson & Byfield,* 126 N. W. 1013.

Warehousemen—Flour manufacturer is not:—One engaged in the business of purchasing wheat and manufacturing the same for sale in the market, is not doing a grain, warehouse or grain elevator business, and Code 2251 does not apply to such a person. *Ex parte Bellamy,* 114 N. W. 376.

Same—May lawfully pledge his own property in his warehouse, thereby becoming a public warehouseman and making his surety liable:—Under Ch. 141, page 180 Laws of 1901 (Secs. 2262-2272 Rev. Code 1905) a warehouseman can by the issuance and delivery of a warehouse receipt for property owned by him and contained in his warehouse create a valid pledge of such property to his creditor as security for his indebtedness, and thereby without an actual change of possession of the property, become a lawful bailee thereof. The statute relating to pledges considered as not intended as a departure from the common law and well established rule that a delivery of the actual or constructive possession of the property is all that is required to create a valid pledge. The delivery of a recognized symbol of title, such as a warehouse receipt, issued by a warehouseman as owner is sufficient as a constructive delivery. The pledge of such property being valid, and by the issuance of the receipt and retention of the property the relation of public warehouseman having been

created the surety on the bond of the warehouseman becomes liable for the conversion of the property. *State* v. *Robb-Lawrence Co.,* 115 N. W. 846, 848, 849.

B.

Board of Railroad Commissioners—Power with respect to Public Warehousemen's bonds:—Under section 2242 Rev. Codes 1905, as amended by chapter 230 of the laws of 1909, the Board of Railroad Commissioners may examine into the sufficiency of the bonds of Public Warehousemen as to the form and general business conduct and reliability of the sureties, and for this purpose may summon before them such witnesses as they please; but it is not decided that they can compel the attendance of such witnesses and take their testimony under oath. The mere fact that a surety company has been licensed to do business within the state does not authorize such company to compel the Board of Railroad Commissioners to approve its bonds as surety for public warehousemen. *State ex rel Dakota Trust Co.* v. *Stutsman et al.,* 139 N. W. 83.

Bond of Public Warehousemen—Requisites of action upon—Parties:—Where suit is brought upon the bond required of public warehousemen by section 2247 Rev. Codes N. D. 1905, for the value of certain wheat storage tickets the complaint must show that such action is brought on behalf of all the holders of storage tickets upon which default has been made. The better procedure is to bring the action in the name of the state for the benefit of such ticket holders. An action by one of such ticket holders in his own individual name will not lie. *Phillips* v. *Semingson et al.,* 142 N. W. 47.

Conversion—Prima facie case:—Where the plaintiff shows delivery of the property to the defendant and a demand for its return and a refusal to comply with such demand, he has made out a *prima facie* case of conversion. *Id.*

Same—Necessity of demand:—In order to sustain an action for the conversion of property stored with a warehouseman it is essential to show demand prior to suit. *Towne* v. *St. Anthony & Dakota Elevator Co.,* 8 N. D. 200; *Sanford* v. *Duluth & Dakota Elevator Co.,* 2 N. D. 6.

Same—Effect of notice as to ownership of property stored:—If a warehouseman receives grain and stores the same issuing

the receipts therefor in the name of the one who deposits the same, it is *held* that in the absence of notice, actual or constructive, of the claim of another of title to the grain stored, that the warehouseman cannot be held guilty of conversion. If, however, it can be shown that the warehouseman received notice or was in possession of such facts as would put a reasonable man on guard or notice of the adverse title, it is *held*, that the issuance of receipts to one not the owner of the grain or the shipment of the grain out of the state, would constitute a conversion thereof. *Towne* v. *St. Anthony & Dakota Elevator Co.*, 8 N. D. 200.

Same—Purchase of mortgaged chattel not in itself a conversion:—The owner of certain wheat who had borrowed money thereon and had given a chattel mortgage to secure the payment thereof, such mortgage being properly recorded as required by law, deposited the same in the warehouse of the defendant, the defendant thereupon paying in full for the wheat and becoming the purchaser thereof. In a suit against the defendant for the conversion of the wheat it was *held* that in such a case a demand was essential before suit brought, and further that the sale and delivery alone did not constitute a conversion. It was further *held* that even had the defendant had actual notice of the mortgage in addition to the constructive notice that the purchase by him of the property would in no sense have been a conversion thereof as, under the laws of the state, the owner of personal property has always a right to sell and deliver the same, the purchaser taking a good title subject to any lien thereon, and finally that a chattel mortgage does not transfer the title of the property. *Sanford* v. *Duluth & Dakota Elevator Co.*, 2 N. D. 6.

Same—When demand unnecessary:—The defendant, a warehouseman, received wheat in store and prior to issuing the receipts therefor to the depositor received notice from the plaintiff that she had a claim against such wheat pursuant to an agreement with the depositor and notified the warehouseman not to issue the receipts until her claim was satisfied. Subsequently the defendant issued the receipts to the depositor without notice to the plaintiff. Upon the above stated facts it was *held* that the issuance of these receipts by the warehouseman constituted a conversion of the property for which he was liable and that the contention made in his behalf that it was necessary to show a

demand made upon him prior to suit brought could not be sustained as the conversion had taken place at the time the receipts were issued to the depositor. *Willard* v. *Monarch Elevator Co.*, 10 N. D. 400.

Same—Time when takes place:—Defendant in October and November, 1896, received in its warehouse a quantity of grain on storage, which grain was covered by a chattel mortgage. Plaintiff, the mortgagee, in the following February, March and August, wrote demanding the grain in controversy and requested a reply. In August plaintiff in a registered letter demanded possession of the grain. This letter was not answered, and suit was commenced. The defendant had shipped the wheat in question out of its elevator soon after its receipt and interposed several defenses. Because of an advance in price of the grain, the time of the alleged conversion became material. *Held:* A demand followed by a refusal would constitute a conversion and that the conversion did not occur in the fall when the grain was shipped out, because under the law the warehouseman could fully comply with his obligation to the person entitled to possession by delivering an equal quantity of like grade, and only upon a demand by the person entitled to possession and a refusal on his part, would the warehouseman be liable for a conversion. *Bank* v. *Minn. & Northern Elevator Co.*, 11 N. D. 280.

Same—Evidence—Sufficient evidence as to price:—In an action for conversion of grain stored the plaintiff testified that he knew the highest market prices of grain between Sept.,1907, and the date of trial and that he knew what the highest price was in October, 1907; that his information was based on inquiries made at the place where the grain elevator was located and at other places in the vicinity; and from general information gained from the newspapers; that he watched the markets generally and read the market reports every day; that he kept track of the price from time to time and inquired the price at different places; *held:* that witness was qualified to testify upon subject of prices. *Cochrane* v. *National Elevator Co.*, 127 N. W. 725.

L.

Replevin—When it will not lie—Mingling of grain:—The owner of certain wheat who had mortgaged it to the plaintiff stored the same in a warehouse and took a general storage re-

ceipt therefor. As was the custom, the wheat was mingled with other wheat stored in the warehouse and the defendant had no right to the return of the identical wheat stored. The mortgagee brought replevin against the defendant for the recovery of the wheat. It was *held* that it could not be maintained for the defendant as the owner of the storage ticket did not have either constructive or actual possession of the grain in question. *Best* v. *Muir*, 8 N. D. 44; *Marshall* v. *Andrews & Gage*, 8 N. D. 364.

N.

Loss by fire—Gratuitious payment—Gross negligence:—In a suit against a railroad company charging it with liability as a warehouseman for the destruction of goods by fire while stored in its depot the evidence was conflicting as to whether or not the company was acting as a gratuitious bailee or as one for hire; but as the evidence further showed that burning waste had been thrown within thirty inches of the depot platform and had been left there by one of the employees of the defendant, it was *held* that the company was liable in either case and that such condust constituted gross negligence. *Whiting* v. *Chicago, M. & St P. R. R. C.*, 5 Dak. 90.

Same—Burden of proof:—Where the defendant, a warehouseman, attempted to excuse the non-delivery of goods intrusted to him on the ground that they were destroyed by fire, the burden of proof was on him to show that the fire was not caused by his negligence. *Marshall* v. *Andrews & Gage*, 8 N. D. 364.

Same—Warehouseman liable under covenant in lease to save lessor harmless for damages:—Defendant leased at a nominal rent, of the N. P. Railroad Co., a portion of its right of way, with a covenant in the lease to save the lessor harmless from any loss or damage occasioned by specified acts of negligence of the lessor. The N. P. R. R. Co. reorganized under the name of the N. P. Railway Co. and transferred all its rights and property to the latter company to whom defendant attorned and paid rent. The railway company unsuccessfully defended a suit for damages by fire to property stored with defendant on the right of way and plaintiff, the railway company, sued on the warranty clause in the lease to recover judgment and costs. *Held:* that the covenant in question passed to the plaintiff the Railway Co.

and invested it with the same rights of protection against losses by it as the original lessor might have asserted had there been no assignment of the lease. *Northern Pacific R. R. Co.* v. *McClure*, 9 N. D. 73.

Q.

Warehouse receipts—Assignment and delivery passes title:—The assignment and delivery of storage tickets unconditionally passes the title to the property and to the storage tickets to the person to whom they are delivered. Section 2266, Rev. Codes, 1905. *St. Anthony & Dak. Elevator Co.* v. *Dawson & Byfield*, 126 N. W. 1013, 1015.

U.

Public warehousemen—Statute prescribing rates of storage constitutional—If such rates be unreasonably low, quœré:—By chapter 126 of the Laws of 1891 of the state of North Dakota the rates of storage which public warehousemen were allowed to charge were prescribed. Said act further defined what would constitute a public warehouse. In an action by the state at the relation of one Stoeser against a warehouseman for violation of this statute it was contended in behalf of the defendant that the act in question abridged his privileges and immunities and that it deprived him of his liberty and property without due process of law and that it denied to him the equal protection of the law guaranteed to him by the state and federal constitutions. It appeared that the defendant had sufficient empty space in his warehouse in which to store the relator's grain and that he refused to receive the grain for the reason that he was unwilling to reduce his storage charges under legislative diction. Nothing was alleged or claimed in argument tending to show that the prescribed rate would be noncompensatory; much less that it would operate practically to confiscate defendant's business as a warehouseman. The question involved was therefore clearly one of legislative power with reference to the limitations of such power existing in the constitutions of the state and nation. The court *held* that the act in question was constitutional as the legislature in the proper exercise of the internal police power, inherent in every government, could control the business of warehousemen. *North Dakota ex rel. Stoeser* v. *Brass*, 2 N. D. 482, aff'd 153 U. S. 391; *Munn* v. *Illinois*, 69 Ill. 80, aff'd 94 U. S. 113; *The People* v. *Budd*, 117 N. Y. 1, aff'd 143 U. S. 517. In the last cited case

the United States Supreme Court declined to anticipate what its decision might have been had the storage rates prescribed by statute been inadequate. See note under *People* v. *Budd,* New York decisions p. 676, this volume.

Warehouseman must return certificate of inspection:—Chapter 113, Page 167, Laws of 1907, requiring elevator companies to return certificates of inspection, *held* to be constitutional; that it does not violate the Federal interstate commerce clause, and that it is within the legitimate powers of the state to prescribe the conditions upon which foreign corporations may be permitted to transact business within the state. *State* v. *Minn and Northern Elevator Co.,* 114 N. W. 482.

CHAPTER XXXV.

OHIO

LAWS PERTAINING TO WAREHOUSEMEN

The Uniform Warehouse Receipts Act is in force in Ohio, with the exception of the last two sections. It took effect January 1, 1909, Laws of Ohio, Vol. 99, p. 400. Also this volume, p. 1.

The act as thus passed is embodied in the General Code of the State of 1910—see section 8457 to 8509 inclusive. The criminal provisions of the act are contained in sections 13,118 to 13,123, inclusive. By Sec. 13,124, which immediately follows, it is provided, "In the next six preceding sections, the following words shall mean: 'warehouseman,' a person lawfully engaged in the business of storing goods for profit; 'receipt,' a warehouse receipt; 'goods,' chattels or merchandise in storage or which have been or are about to be stored; and 'owner,' does not include mortgagee or pledgee."

By Section 13117 of the General Code of Ohio 1910, it is provided as follows:

Issuing or endorsing false warehouse receipt:—Whoever, with intent to defraud, executes and delivers a false or fictitious warehouse receipt, acknowledgment, or other instrument of writing, to the purport and effect that a person held or had received in store, or held or had received in a warehouse, or in another place, or held or had received into possession, custody, or control, goods, wares, or merchandise, when such goods, wares, or merchandise were not held, or had not been received, in good faith, by such person; or, whoever indorses, assigns, transfers, or delivers, or attempts to indorse, transfer, or deliver to a person such false or fictitious warehouse receipt, acknowledgment, or instrument of writing, knowing it to be such, shall be imprisoned in the penitentiary not less than one year nor more than three years.

Lien of consignee of merchandise:—Every person in whose name merchandise is shipped, or delivered to the keeper of a warehouse, or other factor or agent, to be shipped, shall be deemed the true owner thereof, so far as to entitle the consignee of such merchandise to a lien thereon:

1. For any money advanced, or negotiable security given by such consignee, to or for the use of the person in whose name such shipment, or delivery of merchandise to be shipped, has been made.

2. For money or negotiable security received by the person in whose name such shipment, or delivery of merchandise to be shipped, has been made to, or for the use of, such consignee. (R. S. Sec. 3214.) General Code 1910, Sec. 8358.

Limitation on last section:—The lien provided for in the next preceding section shall not exist when such consignee has notice by the bill of lading, or otherwise, at or before the advancing of any money or security by him, or at or before the receiving of such money or security by the person in whose name the shipment or the delivery of the merchandise to be shipped has been made, that such person is not the actual and bona fide owner thereof. (R. S. Sec. 3215.) *Id.* Sec. 8359.

In what cases factor or agent deemed true owner:—Every factor or other agent, intrusted with the possession of a bill of lading, custom-house permit, or warehousekeeper's receipt for the delivery of any such merchandise, and every such factor or agent, not having the documentary evidence of title, intrusted with the possession of merchandise for the purpose of sale, or as a security for advances to be made or obtained theron, shall be deemed to be the true owner thereof, so far as to give validity to any contract made by such agent with any other person for the sale or disposition of the whole or any part of such merchandise, for any money advanced or negotiable instrument, or other obligation in writing, given by such other person upon the faith thereof. (R. S. Sec. 3216.) *Id.* Sec. 3860.

When merchandise deposited by agent as security for antecedent debt:—Every person who accepts any such merchandise on deposit for any antecedent debt or demand, shall not thereby acquire or enforce any right or interest in or to such merchandise or document, other than was possessed or might

have been enforced by such agent, at the time of such deposit. (R. S. Sec. 3217.) *Id.* Sec. 8361.

Rights of true owner under last two sections:—Nothing contained in the next two preceding sections shall prevent the true owner of any merchandise, so deposited, from demanding or receiving it, upon repayment of the money advanced, or on restoration of the security given on the deposit of such merchandise, and upon satisfying such lien as may exist thereon in favor of the agent who deposited it; nor from recovering any balance which may remain in the hands of the person with whom such merchandise has been deposited, as the produce of a sale thereof, after satisfying the amount justly due to such person by reason of the deposit. (R. S. Sec. 3218.) *Id.* Sec. 8362.

Above five sections construed:—Sections 3214, 15, 16, 17, 18, of the Ohio Statutes construed and *held:* to give the ostensible owner of merchandise consigning same to a warehouseman power, in the absence of notice to the consignee that the shipper is not the actual owner thereof, to create in favor of such consignee a lien thereon for antecedent or subsequent advances. *Sidwell* v. *Cincinnati Leaf Tobacco Warehouse Company*, 23 Ky. L. R. 1501.

Hypothecation, by common carriers and warehousemen:—Except as hereinafter provided, nothing contained in this chapter shall authorize a common carrier, warehousekeeper, or other person to whom merchandise or other property may be committed for transportation or storage only to sell or hypothecate it. (R. S. Sec. 3219.) General Code 1910, Sec. 8363.

Owner's relief by action:—In an action therein by the owner of any merchandise or other property, so intrusted or consigned, a court may compel discovery or grant relief against the factor or agent by whom such merchandise or other property has been applied or sold, contrary to law, or against a person who knowingly is a party to such fraudulent application or sale thereof. No answer in such action shall be read in evidence against the defendant making it on the trial of any indictment for the fraud charged in the petition. (R. S. Sec. 3220.) *Id.* Sec. 8364.

Notice to owner of receipt of freight:—All express companies, transportation companies, forwarding and commission

merchants, common carriers, warehousemen, wharfingers, and railroad companies, doing business in this state, within thirty days after the receipt of any property in their warehouse, depot, station, store or other place of deposit or doing business, when such property is plainly marked with the owner's name and place of residence, or it be otherwise known, shall notify the owner that such property is held by them subject to charges, either by leaving notice at the usual residence or place of business of the owner, or by depositing it, postage prepaid, in the proper post-office, duly addressed to such owner. (R. S. Sec. 3221.) *Id.* Sec. 8365.

Register of freight:—All such persons, associations, or companies, shall keep a register in which must be entered a list or inventory of all goods, wares, merchandise, baggage, or other property, with a pertinent description thereof by marks thereon, the size, weight, and the depot, warehouse, or other place where deposited, the time when received, and the amount of charges claimed thereon, which may be left in the possession of such person, association or company, by reason of the owner being unknown, or when such owner's residence is not known, or when such property has been refused, or the owner has neglected to receive it. (R. S. Sec 3222.) *Id.* Sec. 8366.

When property may be sold:—When any such property has been conveyed to any point in this state and remains unclaimed for six months at the place to which it is consigned, and the owner within that time fails to claim it, and pay the proper charges, if there be any against it, such person, association, or company, may sell such freight or other property, at public auction, offering each parcel separately. (R. S. Sec. 3223.) *Id.* Sec. 8367.

Notice of sale of property to be given:—Such property may be offered for sale either in the place where the office, station, depot, or warehouse in which it has been deposited for safe-keeping, is located, or at any other place where such person, association, or company may deem best to insure a prompt sale thereof. At least thirty days' notice of the time and place of sale, containing a descriptive list of the several articles to be sold, with names, numbers, and marks thereon, shall be given by posting such notice at the office, station, or depot of such person, association, or company in the county where the place to

which the property was consigned is situated, or, if there be no such office, station, or depot, by posting such notice in three public places in such county. In addition to the posting at the place of consignment, such descriptive list must be posted at the place where the property is to be sold, and thirty days' notice of the time and place of the sale be published in a newspaper of general circulation in the county where the sale is to be. (R. S. Sec. 3224.) *Id.* Sec. 8368.

Disposition of proceeds of sale:—From the proceeds of such property, such person, association, or company, shall pay all the necessary costs and expenses of the sale, and all proper charges for freight and storage of the property sold, apportioning such expenses and charges, as near as may be, among the articles sold, to the amount received for each and hold any over-plus, subject to the order of the owner thereof, at any time within one year after the sale, upon proof of ownership by affidavit of the claimant or his attorney. After the expiration of one year, all such sums unclaimed shall be paid into the state treasury, to be placed to the credit of the common schools. Any article remaining unsold may be again offered as above provided, until sold. (R. S. Sec. 3225.) *Id.* Sec. 8369.

Suit to subject freight to payment of costs:—Such person, association, or company may bring suit in any court of competent jurisdiction for the amount of the freight, storage, and legal charges thereon, and subject such freight to the payment thereof, after ten days from the giving of the notice provided for in section eighty-three hundred and sixty-five, unless such cost and charges are paid, if the owner or consignee is known or can be found in the county. If such owner or consignee is unknown, a non-resident of the county, or his place of residence is unknown, then such notice shall be published for not less than ten days in a newspaper of general circulation in such county. In such case the suit may be brought after ten days from the first publication. The judgment obtained shall be a lien upon the freight, to satisfy which, with costs of suit, it shall be sold. (R. S. Sec. 3226.) *Id.* Sec. 8370.

Storage and the lien therefor:—Such person, association, or company, after the expiration of ten days from the receipt of goods at the place to which they are consigned, upon giving or

depositing the notice provided in section eighty-three hundred and sixty-five, and the expiration of ten days, may charge a fair and reasonable cost for storage, which shall be a lien upon the goods so stored. Such person, association, or company also, after the expiration of such ten days, may deliver the goods to any warehouseman or storage merchant at the point of destination thereof, or in case there be no responsible warehouseman or storage merchant at such point willing to receive the goods, then at the most convenient point where storage can be effected, and receive from such warehouseman the freight and charges due such railroad or other company thereon, notifying the owner or consignee of such storage, when known, in the manner above provided, and the advances made. All reasonable charges for storage shall be a lien upon the goods so stored. (R. S. Sec. 3227.) *Id.* Sec. 8371.

Copy of notice, sale bill, etc., to be kept:—Such person, association, or company shall keep a copy of the notice, a copy of the sale bill, and the expenses thereof, proportional to each article sold, and also the oath of the claimant of the residue of the proceeds, and must furnish an inspection of it, and if required, copies thereof, to any one, on payment of the proper charges therefor. (R. S. Sec. 3228.) *Id.* Sec. 8372.

Sale of perishable articles:—If perishable property be so conveyed as freight, and remain unclaimed until in danger of great depreciation, or it be refused, or the owner thereof cannot be found, then such person, association, or company may sell it at private sale, or auction, without giving notice, for the best price it will bring, and apply the proceeds as aforesaid. (R. S. Sec. 3229.) *Id.* Sec. 8373.

Within what time property may be claimed:—If the owner of any such property, at any time within five years, reclaims it, and produces satisfactory evidence to the auditor of state of his ownership thereof, the auditor shall draw his warrant in favor of such person upon the treasurer of state for the amount paid into the state treasury. (R. S. Sec. 3230.) *Id.* Sec. 8374.

Penalty for neglect to comply with provisions:—Any such person, association or company who refuses or neglects to perform any of the duties required by this chapter, with the intent to avoid its provisions, shall forfeit and pay a sum not less than one hun-

dred dollars, nor more than five hundred dollars, at the discretion of the court, to be recovered for the use of common schools in the county in which the principal office of such person, association, or company is located, and also be liable to any person injured thereby in double the value of the property. (R. S. Sec. 3231.) *Id.* Sec. 8375.

Appointment of tobacco inspectors:—The probate court, upon application of the proprietor of a leaf-tobacco commission warehouse offering tobacco for sale at public auction, shall qualify one or more appointees of such commission warehouse, skilled in the inspection of leaf-tobacco, to act as inspectors of tobacco at such warehouse, to serve during the pleasure of such warehouseman and until successors shall be appointed and qualified. The court shall grant a license to such proprietor to conduct his business in accordance with the provisions of this chapter. (R. S. Sec. 4334.) *Id.* Sec. 6041.

Exemption from duty for auction sales:—A duty or tax shall not be imposed or collected for sales of tobacco at auction at a leaf-tobacco commission warehouse. (R. S. Sec. 4335.) *Id.* Sec. 6042.

Warehouseman's bond:—Before granting a license for the establishment of a tobacco warehouse, the court shall require the proprietor thereof to enter into bond, payable to the state, in the sum of twenty thousand dollars, with at least one sufficient surety, resident of the county, for the faithful discharge of his duties, which bond shall be filed in the probate court granting such license for the use of any person aggrieved by the nonfulfilment of such duties. (R. S. Sec. 4336.) *Id.* Sec. 6043.

Fees for issuing license, etc.:—The fees for issuing such license shall be five dollars, and for appointing inspectors and approving their bonds, three dollars each. (R. S. Sec. 4337.) *Id.* Sec. 6044.

Entry of appointment on journal:—The court shall cause an entry of the appointment of an inspector to be made on the journal thereof, and a certificate of his appointment under the seal thereof, shall be delivered to such inspector. (R. S. Sec. 4338.) *Id.* Sec. 6045.

Form of inspector's oath:—An inspector of tobacco, before acting as such, under penalty of the forfeiture of three hundred

dollars, shall take the following oath of office: "I, A. B., appointed inspector of tobacco at ..... warehouse, do swear that I will, in all things, faithfully discharge my duty in the office of inspector according to the best of my skill and judgment, according to law, without fear, favor, affection, malice or partiality, so help me God"; which oath any justice of the peace may administer. A copy thereof shall be transmitted to the court appointing such inspector, within ten days from the time such oath is administered. (R. S. Sec. 4339.) *Id.* Sec. 6046.

Inspector's bond:—Such inspector shall enter into bond in the sum of two thousand dollars, to the satisfaction of the probate judge, with sufficient surities, payable to the state for the use of any person injured by the neglect or misconduct of such inspector, conditioned that he will diligently and carefully uncase and break each hogshead, barrel, package, case or box of tobacco in at least four places, or cause it to be done in his presence, and will examine all tobacco brought to any warehouse which he is called on to inspect, and that he will not receive, weigh, pass or mark tobacco or a hogshead, barrel, box or case of tobacco, prohibited by this chapter, and that, in all things, he will well and faithfully discharge and execute his duty in the office of inspector according to the provisions of this chapter. Such bond shall be deposited with the probate judge, who shall file it in his office, and any person injured may bring suit thereon for breach thereof. If the inspector discharges his duties before giving such bond, he shall forfeit eight hundred dollars. (R. S. Sec. 4340.) *Id.* Sec. 6047.

Fees of inspector:—Inspectors of tobacco shall be entitled to twenty-five cents for each hogshead, box or case of tobacco inspected, to be paid by the owner or agent delivering it at the warehouse. The proprietor of such warehouse shall be entitled to two dollars and fifty cents for each hogshead and one dollar for each box or case of tobacco for receiving, storing, weighing, marking and selling it at public outcry or at private sale, at the request of the owner or consignor, and collecting the proceeds thereof. One-half of such allowance to the warehouseman shall be paid by such owner or consignor and the other half by the purchaser thereof. The proprietor of a warehouse need not deliver tobacco stored with him until his legal charges and the inspector's fees are paid. (R. S. Sec. 4341.) *Id.* Sec. 6048.

Penalty against inspector for speculating:—An inspector, during his continuance in office, shall not buy or receive tobacco by barter, loan or exchange, or procure tobacco to be sold or consigned to a merchant, except the tobcco owned by such inspector, under the forfeiture of one hundred dollars for each hogshead so bought, received or procured to be sold or consigned, contrary to this chapter. An inspector may receive his fees for inspection, and his proper rents or debts, in tobacco. (R. S. Sec. 4342.) *Id.* Sec. 6049.

Penalty against altering, etc., inspector's marks:—Whoever willfully erases, alters or defaces a letter, mark, number or figure placed upon a hogshead of tobacco by an inspector, or counterfeits a letter, mark, number or figure thereon shall forfeit one hundred dollars for each offense. (R. S. Sec. 4343.) *Id.* Sec. 6050.

Penalty against inspector for taking illegal fees, etc.:—An inspector accepting or receiving a gratuity or reward for an act done by him in pursuance of this chapter, other than his fees, shall forfeit three hundred dollars, and be disqualified from holding the office of inspector. Whoever offers a gratuity, reward or bribe to an inspector for anything to be done by him, in pursuance of this chapter, for each offense, shall forfeit three hundred dollars. (R. S. Sec. 4344.) *Id.* Sec. 6051.

Penalty against inspector for neglect:—An inspector neglecting or refusing to attend, as directed by this chapter, unless prevented by sickness or unavoidable accident, shall forfeit to the party aggrieved twenty dollars for each neglect or refusal, or be liable to the person aggrieved for all damages sustained by reason of such neglect or refusal, together with costs. (R. S. Sec. 4345.) *Id.* Sec. 6052.

Duty of inspector:—An inspector shall uncase and break each hogshead, barrel, package, case or box of tobacco, or cause it to be done in his presence, which he is called on to inspect and weigh, in not less than four different places. If such inspector believes that such tobacco is sound, clean, in good order and condition, and merchantable, he shall cause it to be weighed. He shall cause the head, side or bulge of such hogshead, barrel, box or package to be marked with the tare thereof, the quantity of net tobacco contained therein and the name of the warehouse. He

shall also mark the head of such hogshead, barrel, box or package with the initials of the name of the owner thereof and the number of such hogshead, barrel, box or package. (R. S. Sec. 4346.) *Id.* Sec. 6053.

To preserve samples:—The inspector shall select two samples of each hogshead, barrel, box or package of tobacco inspected by him and passed as sound and merchantable. Such samples shall consist of not less than six hands or bundles, each of which he shall bind together with a cord and attach a label thereto. On such label shall be written the name of the person for whom, or in whose name such tobacco is inspected, with the number of the package, the gross weight, tare and net weight of such tobacco. One of such samples shall be delivered to the purchaser of the tobacco, with a note or certificate hereinafter provided for, and the other such inspector shall retain for one year after such inspection. (R. S. Sec. 4347.) *Id.* Sec. 6054.

Record of inspection to be kept:—The inspector shall cause to be entered in a book provided for that purpose, each hogshead of tobacco viewed, passed and marked by him, and the quality thereof, mark and warehouse number, with the gross, tare and net weight thereof. (R. S. Sec. 4348.) *Id.* Sec. 6055.

Re-assortment of tobacco rejected by inspector:—When a hogshead of tobacco is brought to a warehouse for inspection, and the inspector refuses to receive and pass it, and the owner or other person bringing such tobacco will undertake to pick and separate the good from the bad, the inspector shall allow the use of one or more of his prizes for prizing such tobacco, so separated and repacked in such hogsheads. When there are several hogsheads of tobacco, belonging to several owners, to be packed, repacked and prized at a public warehouse, the owner or other person whose tobacco is first examined and refused, on bringing it, shall be first permitted to use such prize. A like rule shall be observed in prizing tobacco so picked and prized. (R. S. Sec. 4349.) *Id.* Sec. 6056.

Inspector appropriating samples:—An inspector shall not convert to his own use or dispose of a draught or sample of tobacco drawn out of a hogshead, and it shall be delivered to the

owner or other person offering it for inspection under a penalty of seventy-five cents. (R. S. Sec. 4350.) *Id.* Sec. 6057.

Storage fees:—When a hogshead, box or case of tobacco has remained in a warehouse, licensed under this chapter, for longer than three months, the proprietor may charge additional storage thereon at the rate of twenty cents per month for each hogshead, box or case. A lien is hereby created in his favor for such storage, and all other charges on such tobacco delivered at his warehouse. (R. S. Sec. 4351.) *Id.* Sec. 6058.

Warehouseman to give receipt:—Proprietors of warehouses licensed under this chapter, upon the delivery of a hogshead, box or case of tobacco at such warehouse, shall forthwith weigh and give a receipt for it upon demand of the owner or person bringing it. Such receipt shall be surrendered on the sale or redelivery thereof. (R. S. Sec. 4352.) *Id.* Sec 6059.

Inspector's receipt:—An inspector who passes tobacco shall deliver to the owner as many receipts as may be required, not exceeding one receipt for each hogshead or cask. Such receipt shall state the place and time of reception, the mark, the warehouse number, gross, tare and net weight for the tobacco inspected and passed, and whether of the first or second quality. The first quality shall consist of tobacco clear of and unmixed with trash. The tobacco for which such receipt calls shall be delivered to the owner or bearer thereof on demand and surrender of such receipt. (R. S. Sec. 4353.) *Id.* Sec. 6060.

Inspector issuing false receipt:—An inspector, under penalty of a forfeiture of one hundred dollars for each offense, shall not give a receipt for tobacco unless he has received and passed the quantity for which such receipt is given. (R. S. Sec. 4355.) *Id.* Sec. 6061.

Proprietor liable for failure of samples:—A proprietor of a commission leaf-tobacco warehouse shall be liable to the purchaser of a hogshead, barrel, package, box or parcel of tobacco, inspected and weighed at such warehouse, for the failure of the samples drawn therefrom to fairly represent the tobacco packed therein. He shall also be so liable for underweight existing in such tobacco inspected and marked by such inspector as required by this chapter. (R. S. Sec. 4356.) *Id.* Sec. 6062.

Proprietor's failure to give bond:—A proprietor of a leaf-tobacco warehouse who refuses or neglects to procure a license, and the appointment of an inspector of tobacco at his warehouse, as provided in this chapter, or neglects or refuses to perform the duties required of him by this chapter, shall forfeit to the state not less than fifty dollars nor more than one thousand dollars, at the discretion of the court. Each day's continuance in business after written notice of such omission, shall be an additional offense within the provisions of this section. (R. S. Sec. 4355c.) *Id.* Sec. 6063.

Certain corporation may purchase or lease real estate:—A corporation organized for the purpose of constructing and maintaining buildings to be used for hotels, store-rooms, offices, warehouses, and factories, may acquire by purchase or lease, and hold, use, mortgage and lease all such real estate or personal property as is necessary, for such purpose. But no such corporation shall acquire or mortgage any real or leasehold estate, or lease it for a period exceeding, with all privileges of renewal, the term of five years, without the consent of the holders of two-thirds of the stock, obtained at a meeting called for that purpose, written notice of which was given to each stockholder, either personally, or deposited in the postoffice, properly addressed and duly stamped, not less than ten days before the day fixed for such meeting. Nothing herein shall authorize corporations to buy and sell, or to deal in real estate for profit. (R. S. Sec. 3884a.) *Id.* Sec. 10210.

Embezzlement by carrier, warehouseman, consignors, etc.:—Whoever, being a carrier, warehouseman, factor, storage, forwarding or commission merchant or manufacturer, or his clerk, agent or employe, with intent to defraud, sells, disposes of, or applies or converts to his own use a bill of lading, custom house permit, or warehouse keeper's receipt intrusted to or possossed by him, or property intrusted or consigned to him, or the proceeds of a sale of such poreprty, or fails to pay over such proceeds, deducting charges and usual or agreed commission, or the product of property delivered to him to be manufactured after deducting compensation to which he may be entitled as commission for the manufacture; or a consignor of property or his agent, not being absolute owner thereof, and not having authority to stop, countermand or change the consignment there-

of, or to sell or incumber it during transit, who, with intent to defraud, after delivery thereof for transportation on a water craft or vehicle, stops, countermands, or changes the consignment thereof, or sells, disposes of, or incumbers such property, or converts it to his own use, shall be imprisoned in the penitentiary not less than one year nor more than four years. (R. S. Sec. 6845.) *Id.* Sec. 12,470.

DECISIONS AFFECTING WAREHOUSEMEN

A.

Bailment and sale—Mixing of grain—Consent of parties or custom of trade—Liability for loss.—Where a warehouseman receives wheat, and by the consent of the owner, or in accordance with the custom of trade, mixes the wheat in a common mass with the other wheat in his warehouse, and with the understanding that he is to retain or ship the same for sale on his own account, at pleasure, and on presentation of the warehouse receipt is either to pay the market price thereof in money, or redeliver the wheat, or other wheat in place of it; the transaction is not a bailment but a sale, and the property passes to the depositary, and carries with it the risk of loss by accident. *Chase* v. *Washburn,* 1 O. S. 244. See *O'Dell, Assignee,* v. *Leyda et al.,* 46 O. S. 244.

Same — Same — Receipt construed: — A warehouseman received a large quantity of wheat from the plaintiff and issued a receipt in the following words: "New London, Ohio, August 18, 1891. Received in store from A. Gibb, 403 45-60 bushels of wheat, which we store at ½ cent per bushel per month, and we are to have at the market price when called for, unless we prefer to furnish the grain. Subject to the order of A. Gibb on the surrender of this receipt and the payment of charges. To be kept insured by us. No. 66. Dean & Lilly." Subsequently, the warehouseman went into the hands of a receiver and the warehouse and contents were destroyed by fire. The plaintiff demanded the wheat of the receiver and upon his refusal to deliver brought an action against him for the value thereof. It appeared that in accordance with the consent and understanding of the parties, the wheat was mingled with other wheat of

like kind and quality and that the warehouseman had no doubt shipped the identical wheat received from the plaintiff prior to the destruction of his warehouse. *Held:* that this transaction constituted a sale and not a bailment; it was a sale in which the warehouseman was to pay for the wheat either in money or in other wheat. The doctrine laid down in *Chase* v. *Washburn,* 1 O. S. 244, followed. *Gibb* v. *Townsend, Recr.,* 9 C. C. O. 409.

Same—Same—Bailment:—Plaintiff stored wheat with a warehouseman and took therefor a receipt in the following words:

> "Big Prairie, Sept. 9, '82.
> "Rec'd of George Ledya 173 bu. 20x60 one hundred & seventy-three bus. twenty lbs. of No. 2 wheat. Owner of stored wheat at their own risk.
> "W. H. Easterday & Bro."

There was no agreement made that the wheat should be mixed with other wheat, or that the warehouseman might ship or sell or otherwise dispose of it; nor was there any specified time agreed upon which the wheat should remain in the warehouse, but it was to be kept until the plaintiff was ready to sell. There was no charge made for storage. The wheat was mingled with the wheat of others deposited and the warehouseman sold from the common mass. He always reserved, however, a greater quantity than that deposited with him but not the identical wheat. Subsequently the warehouseman made an assignment to the defendant, and the sheriff issued an execution against the defendant attaching the wheat as the property of the warehouseman in an action against him. Whereupon, the plaintiff depositor brought an action of replevin against the assignee and sheriff for the amount of wheat. It was *held* that the receipt which the warehouseman had given to the defendant, interpreted according to its terms in commercial usage, constituted a bailment and not a sale and that the plaintiff's title was not extinguished or transferred to the warehouseman when the wheat was mixed, with the consent of the parties, with wheat of like quality and grade stored by others on like terms or, with the wheat belonging to the warehouseman. Upon the same principle, where a warehouseman, who has received on deposit in his warehouse, the grain of others, to be stored at their risks, mixes it with his own, and without authority from them, sells from the common mass, but never more than his

own quantity, always reserving enough to return to the depositors their proper quantity of the same grade and quality, but not the grain so deposited, the depositors may claim the grain so substituted for theirs; and, if it be for their benefit to accept the substitution, such acceptance will be presumed, and their title upheld against the warehouseman and his assignee for the benefit of creditors. *O'Dell, Assignee,* v. *Ledya et al.* 46 O. S. 244; *Inglebright* v. *Hammond,* 19 O. S. 337.

Same—Same—Questions for the jury:—The plaintiff brought an action against the defendant warehouseman for the value of a quantity of wheat which he alleged he, as executor, had sold to the defendant. He received therefor weigher's receipt in the following words:

> "Received of J. C. Plank, Admr., load of wheat, eleven bushels, five pounds. Not transferable. Present this at office.
>
> .....
>
> "Weigher."

which was afterward exchanged for storage receipt a copy of which is as follows:

> "James & Neer,
> "Dealers in Grain & Seed.
>
> "No. 240. DeGraff, O., January 5, 1886.
>
> "Received of Joseph C. Plank, four hundred and fifty-two bushels and 25 pounds of wheat (452 25-100 bushels). Subject to the following rules:
>
> "Storage free until June 1, 1886. One cent per bushel per month or any part thereafter. All grains stored at owner's risk. We will not be responsible for loss or damage in any way. Grain taken out of house by owner, five cents per bushel and usual storage.
>
> "James & Neer."

Without fault of the defendant the warehouse and contents were destroyed by fire. The contention of the defendants was that the transaction was a bailment, and that, therefore, they were not liable for the value of the wheat. At the trial of the case the court instructed the jury, after the evidence had been given, to find for the plaintiff, for under the undisputed facts the transaction was a sale. Judgment was rendered upon the verdict which was affirmed by the circuit court and the case brought to the supreme court by writ of error. It appeared from the writ that evidence had been offered which tended to show the existence of a custom of dealing in vogue for many years in the vicinity, to the effect that grain deposited in a warehouse for which weigher's receipts were given was regarded as grain in store until such receipts were presented to the office and the

holder then had the option to exchange weigher's receipt for a storage receipt and continue the storage upon the terms specified in that form of receipt, or, to sell at the price ruling at the time that such weigher's receipts were presented; and that the receipt of the wheat and the giving of weigher's receipt did not constitute a sale of the wheat, but that it remained the property of the depositor until the weigher's receipts were presented at the office and an election to sell made. The trial court assumed that upon the undisputed facts, a sale was conclusively shown, and that a question of law only remained. It was *held* that the court erred in this and that the question should have been submitted to the jury to determine if the understanding between the parties was that the contract was to be a bailmen or a sale. That the jury should have passed upon the question as to whether or not the custom, as claimed by the defendant, actually existed and was known to the plaintiff. To determine also from the other facts appearing, that the understanding was, that although the wheat might be mingled with other wheat belonging in part to the plaintiff and part to defendant, yet defendants were to sell from the common mass from time to time, their portion only, always leaving sufficient on hand to satisfy all depositors. And if the jury should find that the defendants observed this understanding and, especially, if, in addition to the foregoing, they further found that a distinct understanding of the parties was, by virtue of such custom, that the wheat was to be regarded as in store until the plaintiff should elect to make the sale of it, then, if it appeared that no demand for the pay had been made by the presentation of receipts at the office before the fire, the jury would have been justified in finding for the defendants. Therefore, the case was reversed and a new trial in accordance with instructions ordered. *James & Neer* v. *Plank, Exr.*, 48 O. S. 255; *Inglebright* v. *Hammond*, 19 O. S. 337.

B.

Warehousemen—Definition:—A warehouseman is a person who for business and for hire keeps and stores the goods of another. He is a person who receives goods and merchandise to be stored in his warehouse for hire. *In re Rohrer,* 186 Fed. 997. Case reversed upon other points. *Pattison* v. *Dale,* 196 Fed. 5.

A Warehouse—Goods owned by tenant:—A house used exclusively for storing goods is a warehouse, although the building had been constructed and formerly used for another purpose, and although the goods were owned by the tenant. *Allen* v. *The State,* 10 O. S. 287.

Ordinary care—Questions for the court and jury—Not liable for loss resulting from act of God:—Warehousemen are obliged to exercise reasonable and ordinary care in the custody and safe-keeping of property instrusted with them. Such care must have reference to the surrounding conditions and circumstances. The duty of a warehouseman is a matter of law for the court; what was done by him is a question of fact for the jury. Warehousemen are not liable for the loss or injury to goods resulting from the act of God or the public enemy which could not have been prevented by the exercise of ordinary care. *Backus & Sons* v. *Start et al.*, 13 Fed. Rep. 69.

I.

Commingling and changing identity of wheat—Warehouseman liable:—In case of a regular deposit of wheat with a warehouseman, which required of the depositary the use of ordinary diligence in taking care of the wheat, and a redelivery of the same, on demand, to the depositor, on being paid a reasonable compensation for his services, the warehouseman would be liable to the depositor for the value of the wheat, in case he mixes it with other wheat in his warehouse, and ships the same for sale on his own account, notwithstanding he may supply the place of the depositor's wheat by other wheat procured and deposited in his warehouse; and the destruction by accident of the warehouse and the wheat supplied to take the place of the depositor's wheat, will not protect the warehouseman from liability to the owner. *Chase et al.* v. *Washburn,* 1 O. S. 244.*

N.

Counterclaim — Evaporation — Conversion — Trover: — The plaintiff deposited oil with the defendant upon a definite agreement as to the amount to be allowed for evaporation, and also as to rates to be charged by the defendant for storage. An

*NOTE—"The case of *Chase* v. *Washburn,* 1 Ohio State, 244, has long been regarded as a case settling the law arising upon questions in cases of this kind." *Gibb* v. *Townsend, Rec'r,* 9 C. C. O. 409.

action in trover was brought against the defendant warehouseman for his failure to deliver the oil on demand and the plaintiff sought to enforce the agreement of storage. The defendant set up as a defense the terms and conditions upon which it was liable to redeliver the oil; setting forth the terms of the agreement, so far as they were binding on the plaintiff. Demurrer was filed to the answer which was sustained and judgment rendered for the plaintiff. It appeared that the petition alleged that the defendant wrongfully and unlawfully converted the oil to its own use. The court *held* that such an attempt to turn the case from one of contract to one of tort, and thereby to exclude setoffs, could not be allowed. That the instruction of the court that they were to consider the receipts and to allow such deductions in damages as they should find the *reasonable* charge for storage amounted to and also *reasonable* deduction for evaporation was clearly in error. If the receipts held in evidence and the terms were binding on the parties, they furnished the rule of liability between them. Instead of *reasonable* allowances and *reasonable* charges, the defendant was entitled to the actual allowances and the actual charges agreed upon in the receipt for storage. Therefore, judgment was reversed. *Cow Run Co.* v. *Lehmer,* 41 O. S. 384.

P.

Contract to insure—Warehouseman liable upon default:—The plaintiff stored certain goods with the defendant and at the time of making the contract spoke of effecting insurance upon them. The person with whom the storage arrangements were being made and who had stated that he was the manager, said "Let us take care of that for you" and conversation followed as to amount of insurance rates, etc. Later plaintiff received a letter on company's letter head stating the insurance had been effected and explaining delay in forwarding policy. The insurance was not in fact procured and goods destroyed by fire. In an action for their value a verdict for plaintiff was affirmed. *General Cartage and Storage Co.* v. *Cox,* 74 Ohio State, 284.

Q.

Warehouse receipt—By debtor against his own goods—Void as to other creditors:—A firm, engaged in the business of slaughtering hogs and packing ham, borrowed money and issued to the lender, as security for the notes given in payment thereof, two

receipts which were alleged to be warehouse receipts, for a large quantity of ham then in the firm's pork-house. The goods were marked and set apart in the pork-house with the name of the lender thereon. Subsequently the firm, without the knowledge of the lender, the plaintiff herein, sold the pork represented by the receipts and applied the proceeds to the payment of an indebtedness due the defendant bank. This action was brought by the lender against the bank on the ground that the warehouse receipts had passed the title to the pork from the firm of packers to him. The court instructed the jury that if the papers called warehouse receipts were in reality given by the firm to the lender "simply by way of security for a loan of money made by him to them, and not otherwise, that the bank was not liable for it was a creditor of the firm at the time of the issuance of these receipts." It was *held* on appeal that the verdict given for the defendant and the above charge was right. That the hams in question were not pledged to the lender for the reason that he did not have possession thereof and that the receipts were not warehouse receipts such as would pass possession by delivery; that there was nothing in the statute in force at the time of this transaction relating to the warehouse receipts which affected the question to be decided. It was further *held* that as to third persons, other than creditors of the firm and subsequent purchasers and mortgagees in good faith, that the plaintiff had acquired an interest in the hams, but that the instruments not being warehouse receipts were not binding on third persons who were creditors of the firm at the time of the transaction. By statutes in force at the time in order to secure a valid mortgage of goods and chattels there must be an immediate delivery followed by an actual and continued possession of the things mortgaged, and further, the mortgage must be recorded with the township clerk, otherwise the same would not be valid against creditors of the mortgagor and subsequent purchasers and mortgagees in good faith. The firm here had never been engaged in the business of warehousemen and there was no record made of the instruments in question. Therefore the judgment given for the defendant was affirmed. *Thorne* v. *First National Bank*, 37 O. S. 254.

Same—Issued by distiller to himself on his own whiskey—Valid pledge:—A whiskey distiller issued so called warehouse re-

ceipts on his own whiskey in his own warehouse which he used as security for loans to himself. *Held:* that as between the distiller and the holder of the warehouse receipts the effect of the delivery of the documents was to invest the pledgee with the constructive possession of the barrels of whiskey described in the receipt, such receipts containing the substantial elements of well understood warehouse receipts, the transactions being entered into in good faith to secure the loans of money then made. That if constructive possession was not given at least an equitable lien on the whiskey was created. *Pattison* v. *Dale*, 195 Fed. 5, 14. Reversing *In re Rohrer*, 186 Fed. 997, and affirming decision in *In re Miller Pure Rye Distiller Co.*, 176 Fed. 606.

Same—Estopped in pais—Bona fide holder:—The defendants, to whom certain warehouse receipts had been issued by one conducting a distillery with which there was connected a government bonded warehouse, negotiated a sale of the whiskey represented by the receipts. The purchaser, B. & Co., declined to accept the original receipts with the note for the purchase money attached thereto, but insisted upon having such a receipt as would indicate possession and apparent title to the goods without conditions save as to the payment of the government tax and storage. Such a receipt was issued and delivered to B. & Co. by the defendants. B. & Co. accepted certain drafts drawn on them by the defendants for the purchase money. The receipts which the defendants gave to B. & Co. were in form warehouse receipts containing the name of the warehouseman and stating in the body thereof that the whiskey was held for the account of "and subject to the order of B. & Co. Deliverable only on return of this receipt to us properly indorsed, and on payment of United States government tax and charges on same." B. & Co. failed to pay the drafts at maturity, they became insolvent and the plaintiff purchased the warehouse receipts from one to whom they had been pledged by B. & Co. This purchase was made in good faith and without notice of any claim of the defendants for the unpaid purchase price. On the above stated facts it was *held* that the defendants were estopped to set up their claim for purchase price by their act in issuing the receipts which the plaintiff had purchased in good faith. The plaintiff had no knowledge that the whiskey had not been paid for nor that the real warehouse receipts were in the hands of the defendants. Therefore,

judgment which had been given below for defendant was reversed. *Ensel* v. *Levy & Bro.*, 46 O. S. 255.

Same—Not a negotiable instrument:—A receipt given by a warehouseman for property placed in his possession for storage is not, in a technical sense, like a bill of exchange, a negotiable instrument, but it merely stands in the place of the property it represents, and a delivery of the receipt has the same effect in transferring the title to the property as the delivery of the property. *Second National Bank* v. *Walbridge*, 19 O. S. 419.

Same—Issued to factor—Collateral security—Bank protected when bona fide holder:—The owner of a quantity of flour sent the warehouse receipt therefor to his factor for the purpose of sale. The factor, without authority from the owner, pledged the receipt to secure a personal loan made to him. The receipt was not pledged to secure an antecedent debt or demand. The bank in good faith loaned the money and accepted the warehouse receipt as security therefor, and made an agreement for the disposal of the flour. It was *held* that under the terms of the act of March 12, 1844, secs. 3 and 4, in force at the commencement of the action that the factor was to be regarded as the true owner of the flour and that such transfer and agreement were valid and that the bank was entitled to hold the flour as security for the payment of the loan. *Cleveland, Brown & Co.* v. *Shoeman*, 40 O. S. 176.

Same—Same—Action for conversion by assignee:—The defendant, a warehouseman, issued warehouse receipts to the depositor of a large quantity of lard. Such receipts were assigned to and pledged with the plaintiff bank as security for advances made by it to the owner of the lard. The defendant afterward delivered the lard to the owner and did not require the return of the receipts. The receipts were in form negotiable. On the above stated facts it was *held* that the defendant was liable to the plaintiff for the value of the property which he had allowed to be removed from his warehouse. *First National Bank of Cincinnati* v. *Bates*, 1 Fed. Rep. 702.

Same—Same—National bank may hold warehouse receipt as collateral:—A national bank made a loan on a warehouse receipt as collateral security. Under the United States Revised Statutes pertaining to national banks, it was *held* that such a bank may

lawfully make a loan and take as collateral security therefor a warehouse receipt representing personal property. *Cleveland, Brown & Co.* v. *Shoeman*, 40 O. S. 176.

Same—Owner may assign his equity therein as security—Valid pledge:—A debtor having certain warehouse receipts deposited as collateral with a note in bank, executed a second note and assigned the same warehouse receipts as security therefor, subject to the payment of the first note from the proceeds to be derived from a sale of the property represented by the receipts. The holder of the second note did not know the debtor was insolvent. In an action by creditor or debtor it was *held* that both were valid pledges of the receipts and that a sufficient constructive delivery had been made. *Hunt* v. *Bode*, 66 Ohio 255.

Same—Effect of statement in receipt that the bailor has a lien on goods for full cost thereof—Goods levied on while stored:—In an action to recover damages for the wrongful levy upon property stored with a warehouseman the plaintiff in order to prove his title to the property offered in evidence thirteen warehouse receipts which among other things stated that the warehouseman agreed to hold the goods subject to the order of the plaintiff he having a lien thereon for the full cost of the same, it was *held* that the general property in the goods and the right of possession passed to the plaintiff under such warehouse receipts and that he was therefore entitled to compensation for the time that he was deprived of their possession by the sheriff. *Gibson, Stockwell & Co.* v. *The Chillicothe Bank*, 11 O. S. 311. See *Thome* v. *First National Bank*, 37 O. S. 254, which is distinguished from the above.

Same — Duplicate — Issued by mistake — Good defense: — A warehouseman innocently issued duplicate receipts to the owner for property stored with him and the plaintiff, the assignee of the second receipt, obtained possession of the goods from the warehouseman. Subsequently the assignee of the first receipt recovered the goods from the plaintiff in a action of replevin. It was *held* in the action brought by the assignee of the second receipt against the warehouseman that the latter would be permitted to show as against the plaintiff the mistake in the issuance of receipts as a defense to the action, there being no privity between the plaintiff and the defendant. *Second National Bank, etc.*, v. *Walbridge*, 19 O. S. 419.

CHAPTER XXXVI

OKLAHOMA

LAWS PERTAINING TO WAREHOUSEMEN.

Chief inspector—Appointment:—The governor shall appoint a suitable person who shall not be interested, directly or indirectly, in any public warehouse in this state, who shall be a grain expert, and who shall be known as the chief inspector of grain for the state of Oklahoma, whose term of service as such shall continue for two years from the date of his appointment and until his successor is appointed and qualified. Revised Laws 1910, sec. 8245.

Duty of Inspector:—It shall be the duty of the chief inspector to have general supervision of the inspection of grain as required by this Article. *Id.* sec. 8246.

Public warehouses:—Public warehouses shall embrace all warehouses, elevators and granaries in which is stored grain in bulk, and in which the grain of different owners is mixed together, or in which grain is stored in such a manner that the identity of different lots cannot be accurately preserved: *Provided*, That no warehouse, elevator or granary with a capacity of less than 25,000 bushels measurement, shall be considered a public warehouse. *Id.* sec. 8247.

License to operate:—The proprietor, lessee or manager of any public warehouse shall be required, before transacting any business in such warehouses to procure from the district court of the county in which such warehouse is situated a license permitting such proprietor, lessee or manager to transact business as a public warehouseman under the laws of this state, which license shall be issued by the clerk of said court upon written application, which shall set forth the location and name of such warehouse and the individual name of each person interested as owner or principal in the management of the same, or, if the warehouse be owned or managed by a corporation, the names of

the president, secretary, and treasurer of such corporation shall be stated, and the said license shall give authority to carry on and conduct the business of a public warehouse in accordance with the laws of this state, and shall be revocable by the said court upon a summary proceeding before the court upon the complaint of any person, in writing, setting forth the particular violation of law, to be sustained by satisfactory proof to be taken in such manner as may be directed by the court. *Id.* sec. 8248.

Warehouseman—Bond:—Any person receiving a license as herein provided shall file with the clerk of the court granting the same a bond to the people of the state with good and sufficient surety to be approved by said court, in the penal sums as per the following schedule of capacities by measurement: For a public warehouse with a capacity not exceeding 100,000 bushels, $25,000; for a public warehouse with a capacity of more than 100,000 bushels and not exceeding 200,000 bushels, $40,000; for a public warehouse with a capacity of more than 200,000 bushels and not exceeding 300,000 bushels, $60,000; for a public warehouse with a capacity of more than 300,000 and not exceeding 400,000 bushels, $75,000, conditional for the faithful performance of his duties as a public warehouseman as surety for any penalties found by due course of law for violation of any clause of this article and his full and unreserved compliance with the laws of this state in relation thereto. *Id.* sec. 8249.

Conducting warehouse without license:—Any person who shall transact the business of a public warehouseman, without first procuring license and giving a bond as herein provided, or who shall continue to transact such business after such license has been revoked, or such bond may have become void or found insufficient surety for the penal sum in which it is executed by the court approving the same (save only that he may be permitted to deliver property previously stored in such warehouse) shall be guilty of a misdemeanor, and upon conviction be fined in a sum not less than $100, nor more than $500 for each and every day such business is carried on, and the court that issued may refuse to renew any license or grant a new one to any person whose license has been revoked within one year from the time same was revoked. *Id.* sec. 8250.

Receiving grain:—It shall be the duty of every person doing a public warehouse business under this article to receive for storage any grain that may be tendered to him or them in the usual manner with which warehouses are accustomed to receive the same in the ordinary and usual course of business, and not to discriminate between persons desiring to avail themselves of warehouse facilities, and that the schedule of charges for such warehouse service shall be uniform, regardless of quantities of lots so offered or received. *Id.* sec. 8251.

Inspection, receipt:—Receipts of grain by public warehouses in all cases shall be inspected and graded by a duly authorized inspector and shall be stored with grain of a similar grade received as near the same time as may be; but if the owner or consignee so requests and the warehouseman consents thereto, his grain of the same grade may be kept in a bin by itself apart from that of the general stock of the warehouse, which bin shall be marked "special," with the name of the owner and the quantity and grade of same, and the warehouse receipt issued for same shall state upon its face that the grain is stored in a special bin, giving the number of same and the quantity and grade of the grain so stored. *Id.* sec. 8252.

Inspection before delivery:—No grain shall be delivered from a public warehouse constituted by this article unless it be inspected by a duly authorized inspector, and found to be of grade called for by receipt presented for such delivery. *Id.* sec. 8253.

Different grades not mixed:—Public warehousemen shall not mix any grain of different grades together, nor select or mix different qualities of the same grade for the purpose of storing or delivering the same, nor shall they deliver or attempt to deliver grain of one grade for grain of another grade, nor in any way tamper with grain while in a public warehouse in his or their possession or custody, nor permit the same to be done by others with the view or result of profit to any one; and in no case shall grain of different grades, either from the general stock or from special bins, be mixed together while in store or control of such public warehousemen. *Id.* sec. 8254.

Preservation of grain:—Whenever it may be necessary, in order to preserve the condition of any bin or lot of grain stored

in a public warehouse, to run the contents of said grain (bin) through machinery to air, clear or otherwise improve or preserve such condition, and it is so desired by the owner or warehouseman, this may be done, but in such manner as will insure the contents of each bin or lot intact, and of the same grade as when stored; but this shall not be done except under the supervision of an authorized inspector under this article. *Id.* sec. 8255.

Grain refused when:—Nothing of this article shall be construed so as to compel the receipt of grain into any warehouse in which there is not sufficient room to accommodate or store it properly, or in cases where such warehouse is necessarily closed. *Id.* sec. 8256.

Not to be mixed until inspection:—In all places where there are legally appointed inspectors of grain, no proprietor or manager of a public warehouse shall be permitted to receive any grain and mix the same with grain of other owners in the storage thereof, or stored in special bins, until the same shall have been inspected and graded by such inspector. *Id.* sec. 8257.

Combination with carrier prohibited:—No warehouseman, agent or manager of a public warehouse shall enter into any combination, agreement or understanding with any railroad, transfer or agent or manager of a public warehouse shall enter into any combination, agreement or understanding with any railroad, transfer or other carrying corporation, or with any person, by tion of the owner, his agent or assignee. *Id.* sec. 8258.

Warehouse receipt—Contents:—Upon application of the owner or consignee of grain stored in a public warehouse, the same being accompanied with evidence that all charges which may be a lien upon such grain, including charges for inspection, have been paid, the warehouseman shall issue to the person entitled thereto a warehouse receipt therefor, subject to the order of the owner or consignee, which receipt shall bear date corresponding with the receipt of the grain into store, and shall state upon its face the quantity and inspected grade of the grain, and that the grain mentioned in it has been received into store to be stored with grain of the same grade by inspection received at about the date of the receipt, and that it is deliverable upon the return of the receipt properly indorsed by the person to whose order it was issued, and upon the payment of the charges accrued for

storage. All warehouse receipts for grain issued from the same warehouse shall be consecutively numbered, and no two receipts bearing the same number shall be issued from the same warehouse during any one year, except in case of a lost or destroyed receipt, in which case the new receipt shall bear the same date and number as the original, and shall be plainly marked upon its face "duplicate." If the grain for which the receipts are issued was received from railroad cars, the number of each car shall be stated in the receipt, with the amount each car contained; if from wagons or other means it shall be so stated, if having been bulked from sacks the manner of its receipt shall be stated upon the face of such receipt for grain stored. *Id.* sec. 8259.

New receipt:—No warehouse receipt shall be issued except upon the actual delivery of grain into store in the warehouse from which it purports to be issued, and which is to be represented by the receipt; nor shall any receipt be issued for a greater quantity of grain than was contained in the lot stated to have been received; nor shall more than one receipt be issued for the same lot of grain except in cases where receipts for a part of a lot are desired, and then the aggregate receipts for a particular lot shall cover that lot and no more. In cases where a part of the grain represented by the receipt is delivered out of store and the remainder is left, a new receipt may be issued for such remainder; but such new receipt shall bear the same date as the original, and shall state on its face that it is the balance of receipt of the original number, and the receipt upon which a part has been delivered shall be cancelled in the same manner as if the grain it called for had all been delivered. In case it be desirable to divide one receipt into two or more, or in case it be desirable to consolidate two or more receipts into one, and the warehouseman consents thereto, the original receipt shall be cancelled the same as if the grain had been delivered from store; and the new receipts shall state on their face that they are parts of other receipts or a consolidation of other receipts as the case may be; and the numbers of the original receipts shall also appear upon the new ones issued explaining the change; but no consolidation of receipts of dates differing more than ten days shall be permitted, and all new receipts issued for old ones cancelled as

herein provided shall bear the same dates as those originally issued as near as may be. *Id.* sec. 8260.

Liability not limited:—No warehouseman under this article shall insert, in any receipt issued for grain received, any language in any wise limiting or modifying his responsbiility or liability as imposed by the laws of the state. *Id.* sec. 8261.

Cancellation of receipt:—Upon delivery of grain from store upon any receipt, such receipt shall be plainly marked across its face with the word "cancelled," with the name of the person cancelling the same, and shall thereafter be void and shall not again be put in circulation, nor shall grain be delivered twice upon the same receipt. *Id.* sec. 8262.

Receipt transferable:—Warehouse receipts for property stored in warehouses created by this article as herein described, shall be transferable by the indorsement of the party to whose order such receipt may be issued, and such indorsement shall be deemed a valid transfer of the property represented by such receipt, and may be made either in blank or to the order of another. *Id.* sec. 8263.

Felony to issue fraudulent receipt:—Any warehouseman of any public warehouse created by this article, or employee or manager connected with same, who shall be guilty of issuing any warehouse receipt for any property not actually in store at the time of issuing such receipt, or who shall be guilty of issuing any warehouse receipt in any respect fraudulent in its character, either as to its date or the quantity, quality or inspected grade of such property, or who shall remove any property from store (except to preserve it from fire or other sudden danger), without the return and cancellation of any and all outstanding receipts that may have been issued to represent such property, shall, when convicted thereof, be guilty of a felony, and shall suffer, in addition to other penalties prescribed by this article, imprisonment in the penitentiary for not less than two nor more than ten years. *Id.* sec. 8264.

Delivery on return of receipt:—Upon the return of any warehouse receipt issued by persons in charge of warehouses created by this article, and the demand for the delivery of property represented by such receipt, duly indorsed (if not presented by original holder), accompanied by the tender of all

proper charges upon the property represented, such property shall be immediately deliverable to the holder of such receipt, and it shall not be subject to further charges for storage after demand for such delivery shall have been made, and deliveries shall be made by the warehouseman in the order in which such receipts are presented and demand for deliveries made. *Id.* sec. 8265.

Storage rates—Publication of:—The manager of every public warehouse created by this article shall be required, during the first week in January of each year, to publish, in one or more of the newspapers published in the vicinity in which such warehouse is situated, a schedule of rates for the storage of grain in his warehouse during the ensuing year, which rates shall not be increased during the year, and such published rates or any published reduction of them shall apply to all grain received into such warehouse from any person or source, and no discrimination shall be made directly or indirectly, for or against any person, in any charges made by such warehouseman for the storage of grain. The maximum charge for storage and handling of grain including the cost of receiving and delivering, shall be for the first ten days or part thereof, two cents per bushel, and for each ten days or part thereof after the first ten days, one-half of one cent per bushel. *Id.* sec. 8266.

Warehouseman's statements—Reports:—The manager of every public warehouse created under this article, shall, on or before Tuesday morning of each week, cause to be made out, and keep posted in the business office of his warehouse in a conspicuous place, a statement of the amount of each kind and grade of grain in store in his warehouse, at the close of his business on the previous Saturday. He shall also be required to furnish weekly, to the board of commissioners hereinafter provided for, a correct statement of the amount of each kind of grain and grade of same received in store in such warehouse during the previous week, also the amount of each kind of each grade of grain delivered or shipped by such warehouse during the previous week, and what warehouse receipts have been cancelled upon which the grain has been delivered during such week, giving the number of each receipt and the amount, kind and grade of grain received and shipped upon each; how much through grain in transit to points outside of the state, if any, may have been

received for transshipment for which warehouse receipts have not been issued, was so shipped or delivered, and the kind and grade of it, when and how such unreceipted grain was received. He shall also make weekly reports to the said commissioners of receipts and deliveries of such unreceipted grain, if any, received for the account of owners of such warehouse, either directly or indirectly, with the amount, kind and grade of same. He shall also report weekly to the commissioners what receipts, if any, have been cancelled and new ones issued in their stead as herein provided for. He shall also make such further statements to the commissioners regarding receipts issued or cancelled as may be necessary for the keeping of a full and correct record of all receipts issued and cancelled and of grain received and delivered. *Id.* sec. 8267.

Responsibility for damage by fire—Preservation of grain:— The owners of public warehouses, under this article shall not be held responsible for any loss or damage to property by fire while in their custody: *Provided,* Reasonable care and vigilance be exercised to protect and preserve the same; nor shall they be held liable for damage to grain by heating, if it can be shown that proper care has been exercised in handling and storing the same, and that such damage was the result of causes beyond their control; but unless public notice be given that some portion of the grain in store is out of condition or becoming so, grain of equal quality to that received shall be delivered on all receipts presented. In case, however, any warehouseman shall discover that any portion of the grain in his warehouse is out of condition or becoming so, and it is not in his power to preserve the same, he shall immediately give public notice by advertisement in a daily newspaper, if one is published in the city or town in which such warehouse is situated, and by posting a notice in the most public place for such a purpose in such city or town of its actual condition as near as can be ascertained. Such notice shall state the kind and grade of the grain, and give the number of the bins in which it is stored, and shall also state in such notice the receipts outstanding upon which such grain will be delivered, giving the numbers and amounts and dates of each, which receipts shall be those of the oldest dates then in circulation or uncancelled, the grain represented by which has not previously been declared or receipted for as out of con-

dition. The enumeration of receipts and indentification of grain so discredited shall embrace as near as may be as great a quantity of grain as is contained in such bins, and such grain shall be delivered upon the return and cancellation of the receipts so declared to represent it, upon the request of the owner thereof. Nothing herein contained shall be held to relieve the said warehouseman from exercising proper care and vigilence in preserving such grain after such publication of its condition; but such grain shall be kept separate and apart from all direct contact with other grain, and shall not be mixed with other grain while in store in such warehouse. In case the grain declared out of condition, as herein provided for, shall not be removed from store by the owner thereof within two months from the date of the notice of its being out of condition, it shall be lawful for the warehouseman where the grain is stored to sell the same at public auction, for account of said owner, by giving ten days' public notice by advertisement in a daily newspaper, if there be one published in the city or town where such warehouse is located. *Id.* sec. 8268.

Responsibility of warehouseman: — Any warehouseman proven guilty of any act of negligence, the effect of which is to depreciate the condition of property stored in the warehouse under his control, shall be held responsible upon the bond given for such warehouse, and in addition thereto, the license given for such warehouse shall be revoked by a proceeding as hereinbefore stated. *Id.* sec. 8269.

Statement of business:—It shall be the duty of every owner, lessee and manager of every public warehouse in this state to furnish, in writing, under oath, at such time as the commissioners hereinafter provided for shall require and prescribe, a statement concerning the condition and management of his business as such warehouseman. *Id.* sec. 8270.

Copy of law to be posted:—All proprietors or managers of public warehouses in this state shall keep posted up at all times in a conspicuous place in their offices, and in each of their warehouses a printed copy of this article. *Id.* sec. 8271.

Warehouses to be open, when—Scales:—All persons owning property, or interested in the same, stored in any public warehouse created by this article, and all duly authorized inspectors

of such property, shall at all times during ordinary business hours be at full liberty to examine such, and all proper facilities shall be extended to such persons by the warehouseman, his agents and servants for an examination, and all parts of public warehouses shall be free for the inspection and examination of any person interested in property stored therein, or by any authorized inspector of such property. All scales used for the weighing of property in public warehouses shall be subject to examination and test by any duly authorized inspector, the expense of such tests by inspector to be paid by the warehouseman where scales are so tested, and no scales shall be used for the weighing of grain after being found incorrect, until put in order and found accurate and approved for further use by an authorized inspector. *Id.* sec. 8272.

Penalty for violation:—Except as herein otherwise provided, a violation of any of the preceding provisions of this article, by any warehouseman, owner, lessee, manager or employee of public warehouses created by this article, is declared a misdemeanor, and, upon conviction thereof the violators shall be fined not less than one thousand nor more than five thousand dollars, one-fourth of such fine to be awarded and paid to the informer of such misdemeanor. *Id.* sec. 8273.

County attorney to prosecute:—In all criminal prosecutions against a warehouseman for the violation of any of the provisions of this article, it shall be the duty of the county attorney of the county in which such prosecution is brought to prosecute the same to a final issue in the name of and on behalf of the people of the state of Oklahoma. *Id.* sec. 8274.

Injured party may sue on bond:—If any warehouseman shall be guilty of a violation of any provision of this article, to the injury of any person, it shall be lawful for such injured person to bring suit in any court of competent jurisdiction, upon the bond of such warehouseman, in the name of the people of the state of Oklahoma, to the use of such person. *Id.* sec. 8275.

Deputy and assistant inspectors:—The said chief inspector shall be authorized to appoint a suitable person as deputy chief inspector, to be acting chief inspector in the absence of the chief inspector. He shall also be authorized to appoint assistant inspectors, who shall not be interested in any public warehouse in this

state: *Provided,* That he shall not appoint more than three assistant inspectors. *Id.* sec. 8276.

Oath and bond of inspector:—The chief inspector shall, upon entering upon the duties of his office, be required to take the constitutional oath of office. He shall execute a bond to the people of the state of Oklahoma in the penal sum of ten thousand dollars, with sureties to be approved by the board of commissioners hereinafter provided for, conditional that he will pay all damages to any person who may be injured by reason of his neglect, refusal or failure to comply with the law and the rules and regulations of this article. *Id.* sec. 8277.

Oath, bond and liability of assistants:—The deputy chief inspector and all assistant inspectors appointed under this article shall be under the supervision of the chief inspector, to whom they shall report in detail all service performed by them at the close of each working day. The deputy chief inspector and each assistant inspector shall take the same oath as the chief inspector, and execute a bond in the penal sum of twenty-five hundred dollars, with like conditions, and to be approved in like manner as provided for the bond of the chief inspector, which bond shall be filed in the office of the secretary of the state. Suit may be brought upon bonds of either the chief inspector, deputy chief inspector or assistant inspector in any court having jurisdiction thereof, in the county or city where the defendant resides, for the use of any person injured by any act of said chief inspector, the deputy chief inspector, or assistant inspector. *Id.* sec. 8278.

Board of commissioners:—The chief inspector of grain, the deputy chief inspector, assistant inspector and other employees in connection therewith shall be governed in their respective duties by such rules and regulations as may be prescribed by a board of commissioners, consisting of the secretary of state, state auditor and attorney general and the said commissioners, shall have full power to make all proper rules and regulations for the inspection of grain not inconsistent with this article, to fix the charges for the inspection of grain and other duties of said chief inspector, deputy chief inspector, and assistant inspectors, and to make and prescribe rules for the collection of the same, which charges shall be regulated in such manner as will, in the judgment of the said board of commissioners, produce sufficient rev-

enue to meet the necessary expenses of the service of inspection, and no more. *Id.* sec. 8279.

Compensation of Inspectors:—It shall be the duty of said board of commissioners to fix the amount of compensation to be paid to the chief inspector, deputy chief inspector and assistant inspectors, and all other persons employed in the service of inspection, and prescribe the time and manner of payment: *Provided*, That the salary of the chief inspector shall not exceed one thousand dollars per annum, deputy chief inspector, not to exceed six hundred dollars per annum, and the assistant inspectors not to exceed three hundred dollars per annum each; and the board of commissioners not to exceed one hundred dollars per annum each; *Provided further*, That the state of Oklahoma shall not be liable for the payment of any of the above salaries in any manner whatsoever. *Id.* sec. 8280.

Penalty for improper conduct:—Any duly authorized chief inspector, deputy chief inspector, or assistant inspector of grain who shall be guilty of neglect of duty, or who shall knowingly or carelessly inspect or grade any grain improperly, or who shall accept any money or other valuable consideration, directly or indirectly, for any neglect of duty as such chief inspector, deputy chief inspector, or assistant inspector, or any person who shall improperly influence any chief inspector, deputy chief inspector, or assistant inspector of grain in the performance of his duties as such inspector shall be deemed guilty of a misdemeanor and on conviction shall be fined in a sum not less than five hundred dollars nor more than one thousand dollars or shall be imprisoned in the county jail not less than six nor more than twelve months, or both such fine and imprisonment, in the discretion of the court. *Id.* sec. 8281.

Penalty for acting without authority:—Any person who shall assume to act as an inspector of grain who has not been duly appointed, sworn and given bond as provided herein, shall be held to be an imposter, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail not less than three months nor more than six months, or both such fine and imprisonment, at the discretion of the court, for each and every offense so committed. *Id.* sec. 8282.

Removal of Inspectors:—Upon complaint in writing of any person to the board of commissioners, supported by satisfactory proof, that any person appointed or employed by said chief inspector under the provisions of this article has violated any of the rules prescribed for his government, or has been guilty of any improper official act, or has been found incompetent for the duties of his position, such person shall be removed from his employment by the same authority that appointed him, and his place shall be filled, if necessary, by a new appointment. When it shall be deemed necessary to reduce the number of persons appointed or employed, their terms of service shall cease under the orders of the same authority by which they were appointed or employed. *Id.* sec. 8283.

Appeal from inspectors:—In all matters invloving doubt on the part of the chief inspector, the deputy chief inspector or any assistant inspector, as to the proper inspection into or out of any warehouse created by this article or in case any owner, consignee or shipper of grain, or any warehouse manager shall be dissatisfied with the decision of the chief inspector, deputy chief inspector, or any assistant inspector in matters pertaining to inspection, an appeal may be made to the committee hereinafter provided for, who shall at once convene, and whose decision, after a careful inquiry into the questions at issue, shall be final. *Id.* sec. 8284.

Arbitration committee:—The board of commissioners shall, appoint committees for the adjustment of differences between inspectors and warehousemen, or owners or representatives of grain, arising from the acts of inspectors, each committee to consist of three persons well known as experts in grain; and a committee shall be appointed in each city or town where public warehouses under this article are located. Said committees to be known as the arbitration committees of the board of commissioners. *Id.* sec. 8285.

Same—Rules:—The board of commissioners shall make equitable and legal rules governing said committee's procedure, in the arbitrations, the manner and amount of compensation, the method of appointment and terms of service. *Id.* sec. 8286.

Grading:—The board of commissioners shall establish a proper number and standard of grades for the inspection of

grain, with due regard to the prevailing usages of the markets of this state, the interests of both producers and dealers, and, as near as may be, to conform with standards of grade adopted by leading markets of the United States: *Provided,* No modification or changes of grades shall be made or any new ones established without public notice being given of such contemplated changes, for at least twenty days prior thereto, by publication in three daily newspapers printed in this state: *Provided further,* That no mixture of old or new grades, even though designated by the same name or distinction, shall be permitted while in store. *Id.* sec. 8287.

Report of commissioners:—The board of commissioners shall, on or before the first day of January of each year, make a report to the governor of their doings for the preceding year, to contain such facts as will disclose the actual working of the system of the warehouse business of this state as contemplated by this article and such suggestions thereto as to them may appear pertinent. *Id.* sec. 8288.

Commissioners to inspect warehouses:—Said commissioners shall examine into the condition and management, and all other matters concerning the business of warehouses under this article in this state, so far as the same may pertain to the relations of such warehouses to the public, and to the security and convenience of persons doing business therewith, and to ascertain whether the offices, directors, managers, lessees, agents and employees comply with the laws of this state now in force or to be in force concerning such warehouses. Whenever it shall come to their knowledge, or they shall have reason to believe, that any law governing the public warehouses of this state is being or has been violated, they shall cause to be prosecuted or prosecute all persons guilty of such violation. To enable such commissioners efficiently to perform their duties under this article, it is hereby made their duty to cause one or more of their number, at least once in six months, to visit each warehouse in this state and to inquire personally into the management of such warehouse business. *Id.* sec. 8289.

Examinations by commissioners:—The property, books, records, accounts, papers and proceedings of all such warehousemen as are contemplated by this article, shall at all times during business hours be subject to the examination and inspection of

the commissioners, or any one of them, and they or any one of them shall have power to examine under oath any owner, manager, lessee, agent or employee of a public warehouse, and any other person, concerning the condition and management of such warehouse. *Id.* sec. 8290.

Witnesses may be compelled to attend:—In making any examination as contemplated by this article or for the purpose of obtaining information as contemplated by this article, said commissioners shall have the power to issue subpœnas for the attendance of witnesses, and may administer oaths. In case any person shall willfully refuse to obey such subpœna, it shall be the duty of the district court of any county, upon application of said commissioners, to issue an attachment for such witness, and compel such witness to attend before the commissioners and give his testimony upon such matters as shall be lawfully required by such commissioners; and the said court shall have power to punish for contempt as in other cases of refusal to obey the process and order of such court. *Id.* sec. 8291.

Penalty for refusing to testify:—Any person who shall willfully neglect or refuse to obey the process of subpœna issued by said commissioners, and appear and testify as therein required, shall be guilty of a misdemeanor, and shall be liable to arraignment and trial in any court of competent jurisdiction, and on conviction thereof shall be punished for each offense by a fine of not less than twenty-five dollars nor more than five hundred dollars, or by imprisonment of not more than thirty days, or both such fine and imprisonment, in the discretion of the court before which such conviction shall be had. *Id.* sec. 8292.

County attorney to prosecute:—It shall be the duty of every county attorney on the request of said commissioners, to institute and prosecute all suits or proceedings which he shall be directed by said commissioners to institute and prosecute for a violation of this article, or any law of this state concerning public warehouses as constituted by this article, or the officers, employees, owners, operators or agents of such warehouses. *Id.* sec. 8293.

Prosecutions and fines:—All prosecutions under this article shall be in the name of the state of Oklahoma, and all moneys

arising therefrom shall be paid into the state treasury by the sheriff or other officers collecting the same. *Id.* sec. 8294.

Injured party may sue for damages:—This article shall not be construed to waiver or affect the right of any person injured by the violation of any law in regard to warehouses from prosecuting for his private damages in any manner allowed by law. *Id.* sec. 8295.

Grain in cars may be inspected:—Any person, partnership or corporation may have grain, in carload lots in transit or otherwise, inspected by said inspectors under this article in the same manner as though in warehouses and subject to the same rules and regulations as herein prescribed. *Id.* sec. 8296.

Public warehouses and warehousemen defined:—All persons, firms, companies, or corporations incorporated under the laws of Oklahoma, who shall receive cotton, or broomcorn, under the provisions of this article, shall be deemed and taken to be public warehousemen, and all warehouses which shall be owned or controlled, conducted and managed in accordance with the provisions of this article, shall be deemed and taken to be public warehouses; *Provided,* that a public warehouse for the storage of cotton or broomcorn may, within the meaning of this Act, include a lot or parcel of land enclosed with a lawful fence, the gates of, or entrances to which shall be kept securely locked at night. *Id.* sec. 8297.

Certificate and bond:—The owner, proprietor, lessee, or manager of any public warehouse, whether an individual firm or corporation, before transacting any business in such public warehouse, shall procure from the county clerk of the county in which the warehouse or warehouses are situated, a certificate that he is transacting business as a public warehouseman under the laws of the State of Oklahoma, which certificate shall be issued by said clerk upon a written application setting forth the location and name of such warehouse of warehouses, and the name of each person, individual, or member of the firm interested as owner or principal in the management of the same; or if the warehouse is owned or managed by a corporation, the names of the president, secretary and treasurer of such corporation shall be stated, which application shall be received and filed by such clerk and preserved in his office, and the said certificate shall give au-

thority to carry on and conduct the business of a public warehouse within the meaning of this article, and shall be revocable by the district court of the county in which the warehouse or warehouses are situated upon a proceeding before the court, on complaint by written petition of any person, setting forth the particular violation of the law, and upon process, procedure and proof as in other civil cases. The person receiving a certificate as herein provided for, shall file with the county clerk, granting same, a bond payable to the State of Oklahoma with good and sufficient surety to be approved by said clerk, in the penal sum of not less than five thousand dollars, conditioned for the faithful performance of his duties as a public warehouseman, which said bond shall be filed and preserved in the office of said clerk. *Id.* sec. 8298.

Warehouse receipts:—On application of the owner or depositor of the property stored in a public warehouse, the warehouseman shall issue over his own signature, or that of his duly authorized agent, a public warehouse receipt therefor, to the order of the person entitled thereto, which receipt shall purport to be issued by a public warehouse, shall bear date of the day of its issue, and shall state upon its face the name of the warehouse and its location, the description, quantity, number and marks of the property stored, and the date on which it was originally received in the warehouse, and that it is deliverable upon the return of the receipt properly endorsed by the person to whose order it was issued, and on payment of all charges for storage. All such receipts shall be numbered consecutively, in order of their issue, and when such receipt is for cotton or broomcorn the receipt shall state whether the cotton therein described is exposed to the weather or is under shelter; and a correct record of such receipt shall be kept in a well-bound book, which shall be at all reasonable hours open to examination by any interested person; and no two receipts bearing the same number shall be issued from the same warehouse, during the same year, nor shall any duplicate receipt be issued except in the case of a lost or destroyed receipt, in which case the new receipt shall bear the same date and number as the original and shall be plainly marked on its face, "duplicate;" *provided*, that no such duplicate receipt shall be issued by the public warehouseman until an affidavit

of the owner has been filed with said public warehouseman that said original receipt has been lost or destroyed. *Id.* sec. 8299.

Receipt to issue, when:—No public warehouse receipt shall be issued, except upon the actual previous delivery of the goods into the public warehouse, or upon the premises and under the control of the public warehouseman by whom it purports to be issued, and the name of the warehouse shall invariably be specified in such receipt. *Id.* sec. 8300.

Property delivered on return of receipt:—On the presentation and return to the warehouseman of any public warehouse receipt issued by him and properly endorsed, and the tender of all proper warehouse charges upon the property represented by it, such property shall be delivered immediately to the holder of such receipt; but no public warehouseman who shall issue a receipt for goods shall under any circumstances, or upon any order or guarantee whatsoever, deliver the property for which receipts have been issued, until the said receipts shall have been surrendered and cancelled, and in default of the strict compliance of the provisions of this section, he shall be held liable to the legal holder of the receipt for the full value of the property therein described as it appeared on the day of the default and shall furthermore be liable to the special penalty herein provided. Upon delivery of the goods from the warehouse upon any receipt, such receipt shall be plainly marked in red ink across its face, the word "cancelled" with the name of the person cancelling the same, and shall thereafter be void, and shall not again be put in circulation. *Id.* sec. 8301.

Receipts to contain no limitations:—No public warehouseman shall insert in the public warehouse receipt issued by him, any language limiting or modifying his liabilities or responsibilities as imposed by the law of this State. *Id.* sec. 8302.

Receipt negotiable:—The receipt issued against property stored in public warehouses, as herein provided for, shall be negotiable and transferable by endorsement in blank or by special endorsement and delivery in the same manner and to the same extent as bills of exchange and promissory notes now are, without other formality, and the transferer or holder of such public warehouse receipt shall be considered and held as the actual and exclusive owners to all intents and purposes, of the property

therein described, subject only to the loan (lien) and privilege by the public warehouseman for storage and other warehouse charges; *Provided*, that no public warehouseman shall issue warehouse receipts against his own property in his own warehouse, but upon sale of such property in good faith, may issue to the purchaser his public warehouse receipt in form and manner as herein provided, which issue and delivery of the receipt shall be deemed to complete the sale, and shall constitute the purchaser full owner, as aforesaid, of the property therein described. Nothing in this last clause shall be construed to exempt the issuer of such receipt for his own goods, in his own public warehouse, from complying with and being subject in all respects to all other sections and provisions of this article. *Id.* sec. 8303.

Insurance:—The owner of each public warehouse for the storage of cotton or broomcorn, shall carry insurance on cotton and broomcorn against fire, equal in amount to the value of fifty per centum of the actual capacity of said warehouse and in case of loss by fire shall pay when collected, to each holder of a warehouse receipt, three-fourths of the market value of his cotton or broomcorn as shown by said receipt on the date said cotton or broomcorn was destroyed; *Provided*, that all storage fees may be retained by the owner or owners of said warehouse. *Id.* sec. 8304.

Fees:—The owner of a public warehouse shall be allowed to charge the following fees as full compensation for weighing, storage and insurance on all cotton or broomcorn stored, viz.: A sum not to exceed seventy-five cents per bale for the first month, and fifteen cents per month for each additional month or major fraction thereof; *Provided*, that if said warehouse is located on a railroad right of way, the owner or owners of said warehouse shall cause to be loaded all cotton shipped from said warehouse, without additional compensation. *Id.* sec. 8305.

Penalty for violation:—Any public warehouseman who violates any of the provisions of this article shall be deemed guilty of criminal offense and upon conviction thereof, shall be punished by a fine in any sum not exceeding five thousand dollars, or imprisonment in the State penitentiary not exceeding two years, or by both such fine and imprisonment. And every person aggrieved by the violation aforesaid, shall have the right to maintain or action against the person or persons, corporation or cor-

porations, so violating any of the prvisions of this article, for the recovery of damages which he or they may have sustained by reason of such violation aforesaid before any court of competent jurisdiction, whether such person so violating shall have been convicted of offense under this article or not. *Id.* sec. 8306.

Not to apply to private warehouse:—Nothing herein shall be construed to apply to private warehouses or to the issue of receipts by their owners or managers under existing laws, or to prohibit public warehousemen from issuing such receipts as are now issued by private warehousemen under existing laws; *Provided*, that such private warehouse receipts issued by public warehousemen shall be written on a form blank indicating that it is issued from a public warehouse, but shall bear on its face in large characters the words "not a public warehouse receipt." *Id.* sec. 8307.

Fraudulent warehouse receipts:—Any person carrying on the business of a warehouseman, wharfinger or other depositary of property, who issues any receipt, bill of lading or other voucher for any merchandise of any description which has not been actually received upon the premises of such person, and is not under his actual control at the time of issuing such instrument, whether such instrument is issued to a person as being the owner of such merchandise, or as a security for any indebtedness, is punishable by imprisonment in the penitentiary not exceeding five years, or by a fine not exceeding one thousand dollars, or both. *Id.* sec. 2711.

Same—Exception:—No person can be convicted of any offense under the last two sections by reason that the contents of any barrel, box, case, cask or other vessel or package mentioned in the bill of lading, receipt or other voucher, did not correspond with the description given in such instrument of the merchandise received, if such description corresponded substantially with the marks, labels or brands upon the outside of such vessel or package, unless it appears that the accused knew that such marks, labels or brands were untrue. *Id.* sec. 2712.

Duplicate receipts or vouchers:—Every person mentioned in the first two sections of this article who issued any second or duplicate receipt or voucher of a kind specified in those two sections, at a time while any former receipt or voucher for the mer-

chandise specified in the second receipt is outstanding and uncancelled, without writing across the face of the same the word "duplicate," in a plain and legible manner, is punishable by imprisonment in the penitentiary not exceeding five years, or by a fine not exceeding one thousand dollars, or both. *Id.* sec. 2713.

Lien for services rendered:—Every person, who, while lawfully in possession of an article of personal property, renders any service to the owner thereof by labor or skill employed for the protection, improvement safe-keeping or carriage thereof, has a spcial lein thereon, dependent on possession, for the compensation, if any, which is due to him from the owner for such service. *Id.* sec. 3852.

Re-weighing of stored cotton—Duty of buyer:—Every person, firm or corporation in the State of Oklahoma, engaged in the business of cotton buying, where lists of baled cotton are purchased from local buyers, and the said cotton stored in cotton yards or cotton warehouses owned or operated by cotton weighers, shall, before removing same, have said cotton re-weighed. Act approved March 7, 1913, Sess. Laws Okla., 1913, chap. 24, page 41, sec. 1.

Same—Duty of warehousemen:—Every owner or operator of a cotton yard or warehouse in the State of Oklahoma, shall be required, before allowing any cotton to be removed from his yard, or warehouse, to re-weigh same in the presence of the owner or purchaser, or some agent of said purchaser, or owner of same; and, with indelible ink, mark on the bale, in figures, the weight of the bale. *Id.* sec. 2.

Test of scales:—Any interested persons, not satisfied with the weights or weighing, shall have the right to ask the sheriff of the county in which said cotton yard or warehouse is located to test said scales and the sheriff, or his deputy, shall immediately upon receipt of such request comply with same; provided, the purchaser shall pay the fee of the second weighing. *Id.* sec. 3.

Conclusiveness of re-weighing:—Persons, firms or corporations engaged in the cotton business, coming under the provisions of this act, shall have the right to be present at the re-weighing of any cotton they may purchase or desire to purchase, and when any cotton shall be re-weighed in their presence they shall accept

the weights as being correct and make final settlement on the same. *Id.* sec. 4.

Same:—When a list of cotton has been re-weighed before leaving the cotton yard, according to the provisions of this act, the transaction between the buyer and seller as to weights, shall be at an end and neither party shall have any recourse on the other. *Id.* sec. 5.

Violation of act—Punishment:—Any person, firm or corporation, failing or refusing to comply with this act, shall be deemed guilty of a misdemeanor and upon conviction shall be subject to a fine of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00). *Id.* sec. 6.

DECISIONS AFFECTING WAREHOUSEMEN

B.

Ordinary care—Warehousemen not insurers:—Warehousemen are not insurers of property intrusted with them but are liable only for negligence or the want of ordinary care. There must be some dereliction of duty on the part of a warehouseman in relation to the goods in order to make him liable to the owner for the loss. *Walker* v. *Eikleberry*, 7 Okla. 599.

Same—Liable for want of care in proper construction of warehouse:—Plaintiff stored with defendant certain meat which spoiled while in storage by becoming impregnated with a strong taste of pine or other pungent wood. *Held,* that a warehouse must be reasonably and ordinarily safe against common, ordinary occurrences, and the warehouseman is liable where injury results from a lack of reasonable skill and diligence in its construction. In the protection and care of property intrusted to him, a warehouseman must use ordinary care, which is such care and diligence as ordinarily prudent persons in that business are accustomed to exercise towards such property, and whether such care was used is a question for the jury. Judgment for plaintiff affirmed. *Muskogee Crystal Ice Co.* v. *Riley Bros.,* 24 Okla. 114; 108 Pac. 629.

Same—Bank liable for loss of jewelry received on special deposit:—Plaintiffs delivered a box containing jewelry to a

National Bank for safe keeping, and evidence showed that it was the custom of the bank to receive packages, papers, and the like for safe keeping for its depositors. *Held:* that the bank was liable for the loss of same occasioned by negligence of its employees. *Bank* v. *Tevis,* 29 Okl. 714; 119 Pac. 218.

Same—Liable for damage caused by flooding, when—Measure of damage:—Action against warehouseman for damage by water to household goods on storage, caused by store room becoming flooded, and the warehouseman negligently permitting the goods to remain wet after the water came into the warehouse. The evidence examined and held to sustain verdict for plaintiff. The Court instructed the jury as follows: "Should you find that the plaintiff is entitled to recover, then you must measure his damages from the evidence in this case, by determining the difference between the market price of the goods at the time they were delivered to defendant and at the time they were delivered back by defendant to plaintiff." Further held that as defendant had requested this prayer he could not be heard to deny that it correctly stated the law. *Red Ball Transfer & Storage Co.* v. *DeLoe,* 120 Pac. 575.

Q.

Warehouse receipts—When warehouseman is not liable for improper use of receipts:—A warehouseman received certain cotton on storage from a cotton grower and issued receipts therefor. Subsequently the receipts were sold to cotton buyers who presented them and received the cotton but were permitted to retain the receipts to take to the cotton market so that if the cotton fell short in weight they might come back to the warehouseman who agreed to make up the difference. These tickets were afterwards accepted by plaintiff as collateral to secure an overdraft. The rule stated to be that if the warehouseman placed the receipts in the hands of the cotton buyer for any other than a legitimate purpose, or if they were fairly chargeable with any negligence by means of which the buyer had been enabled to impose on the bank, the warehouseman would be liable. Evidence discussed and judgment for defendant affirmed. *Bank* v. *Eldridge,* 109 Pac. 62, 64.

CHAPTER XXXVII.

OREGON

LAWS PERTAINING TO WAREHOUSEMEN.

The Uniform Warehouse Receipts Act, with the exception of the changes noted below is in force in Oregon. It was filed in the office of the Secretary of State on February 27, 1913, and provides it shall take effect on January 1, 1914. General Laws of Oregon 1913 Ch. 305 p. 581. See also this volume p. 1. The Act constitutes an amendment of section 6035 of Lord's Oregon Laws. In lieu of the first section of the Uniform Warehouse Receipts Act it is provided as follows:

"It shall be the duty of every person keeping, controlling, managing or operating as owner or agent, or superintendent of any company or corporation, any warehouse, commission house, forwarding house, mill, wharf or other place where grain, flour, pork, beef, wool or other produce or commodity is stored, to delivered to the owner of such grain, flour, pork, beef, wool, produce or commodity a warehouse receipt therefor."

The definition of "Warehouseman" as given in the Act is as follows:

"'Warehouseman' means a person lawfully engaged in the business of storing goods for profit, and includes every person keeping, controlling, managing or operating as owner or agent or agent or superintendent of any company or corporation, any warehouse, commission house, forwarding house, mill, wharf or other place where grain, flour, pork, beef, wool or other produce or commodity is stored."

By section 60 sections 6036, 6039 and 6040 of Lord's Oregon Laws are repealed.

Commodities of different quality must not be mixed:—No person operating any warehouse, commission house, forwarding house, mill, wharf, or other place where grain, flour, pork, beef, wool, or other produce or commodity is stored shall mix any grain, flour, pork, beef, wool, or other produce or commodity

of different grades together (or different qualities of the same grade,) or deliver one grade for another, or in any way tamper with the same while in his possession or custody, with a view of securing any profit to himself or any other person and in no case mix different grades together while in store. Lord's Ore. Laws 1910, sec. 6037.

Produce must not be shipped without owner's consent:—No person operating any warehouse, commission house, forwarding house, mill, wharf, or other place of storage shall sell, incumber, ship, transfer, or in any manner remove or permit to be shipped, transferred, or removed beyond his custody and control, any flour, grain, beef, pork, wool, or other produce or commodity for which a receipt has been given by him as aforesaid, whether received for storing, shipping, grinding, or manufacturing, or other purposes, without the written assent of the holder of the receipt. *Id.* sec. 6038.

Penalty for violation of provisions of this act:—Any person who shall violate any of the provisions of this act shall be liable to an indictment, and upon conviction shall be fined in any sum not exceeding five thousand dollars, or imprisonment in the penitentiary of this State not exceeding five years, or both; and in case of a corporation, the person acting for said corporation shall be liable for a like punishment upon indictment and conviction; and all and every person or persons aggrieved by a violation of this act may have and maintain an action at law against the person or persons, corporation or corporations, violating any of the provisions of this act, to recover all damages, immediate or consequential, which he or they may have sustained by reason of such violation, before any court of competent jurisdiction, whether such person shall have been convicted under this act or not. *Id.* sec. 6041.

Grain not to be received in storage till bailee complies with this act:—It shall be unlawful for any bailee or bailees, on and after July 1, A. D. 1903, to solicit or receive any kind of grain in storage belonging to any other person or persons, whether for compensation or otherwise, until such bailee or bailees shall have complied with the provisions of this act. *Id.* sec. 6042.

Bailees to procure license from county court and display same:—It shall be the duty of every bailee or bailees, before

engaging in the business of storing grain belonging to any other person or persons, whether for compensation or otherwise, to procure from the county court of the country in which his or their place or places of business shall be located, a license or certificate authorizing such bailee or bailees to engage in the said business of storing grain belonging to any other person or persons, whether for compensation or otherwise, which license or certificate shall be conspicuously displayed in the office or offices, or other part of any building used as a warehouse, where grain is kept on storage belonging to any other person or persons, whether for compensation or otherwise. *Id.* sec. 6043.

County court to require undertaking:—It shall be the duty of the county courts of the several counties of the state when any person, firm, or corporation shall make application for a license or certificate, as provided in section 6043, and each and every year thereafter, to require from such person or persons an undertaking in such sum as may be fixed by the county court, not less than $1,000 nor more than $50,000, for the faithful performance of their duties as bailee or bailees, as shall have been by law in such cases made and provided, which said license, or certificate, shall be issued by said county court for a period of not less than one year. *Id.* sec. 6044.

Who may be sureties—Form of undertaking:—The sureties to any such undertaking may be either three or more residents of the county, who shall have the qualifications of bail upon arrest, or any surety company designated by statute as competent bondsmen on any official bond required by the state or any county thereof. Before any such license or certificate shall issue, for the purposes hereinbefore provided, such county court shall require the applicant therefor to execute and deposit with the clerk of said court an undertaking, in substantially the following form:—

Whereas, ... has applied to the county court of the county of ....., state of Oregon, for license to engage in the business of storing grain for compensation, or otherwise, within said county, under the laws of the state of Oregon; and whereas said county court has fixed the undertaking of said .... at the sum of $.....;

THEREFORE, know all men by these presents, that .... (set forth the name of principal, and if corporation, where organized, and, if partnership, the names of partners), as principal, and ...., as surety (or sureties), hereby undertake and agree, in consideration of the issuance of such license, that the said .....

....., herein above named as principal, will well and faithfully operate and conduct said business of storing grain for compensation, or otherwise, within said ..... county in compliance with the statutes and laws of the state of Oregon; and, further, that the undersigned will pay to all or any person or persons, firm or firms, corporation or corporations, aggrieved by violation of the terms and conditions of this undertaking, all damages, immediate or consequential (not exceeding said sum of $.....), which may be sustained by reason of such violation.

In witness whereof the parties have caused these presents to be signed and sealed this ..... day of .....

....

Id. sec. 6045.

New undertaking may be required—On failure license revoked and sheriff to take possession:—If the surety on any such bond shall become insufficient, at any time, said court shall require the principal thereon to give a new undertaking within such time as the court may direct, and if such new undertaking shall not be given within the prescribed time, license of such principal shall be revoked by the court, and such court shall order the sheriff of the county to take possession of the warehouse, and of the grain on storage therein belonging to any person or persons, whether for compensation or otherwise, and hold the same until the business of such concern shall be settled up and adjusted. *Id.* sec. 6046.

Who may sue on undertaking:—In the event of a breach of the conditions of said undertaking, legal proceedings thereon may be brought jointly, or severally, by the persons damaged by said parties, and for such remedies as are indicated in said undertaking. *Id.* sec. 6047.

County court to examine undertaking and enter approval or rejection of record:—The county court of such county shall examine such undertaking, and if the same shall be satisfactory to them, they shall approve the same by an order and cause such order and the undertaking to be entered in the commissioners' journal, and a copy thereof, duly certified to by the county clerk of the county keeping such records, shall be admitted and read in evidence in any court in this State with like force and effect as the original thereof. If such undertaking shall not be satisfactory, such county court shall mark the same "rejected," and enter a record thereof on the journal, and shall immediately give notice thereof to the person, firm, or corporation signed as principal thereon. *Id.* sec. 6048.

Licensee to file annual statement of grain in store and represented by outstanding receipts:—On the fifteenth day of June of each year each person, firm or corporation licensed to operate a grain storage business within such county, shall file, with the county clerk of the county within which such business may be conducted, a statement showing the quantity of grain in store, expressed in the language usual and customary in respect thereto, and also a statement of the quantity of grain represented by outstanding warehouse receipts. Such statement shall be filed by the county clerk and safely kept for public inspection. *Id.* sec. 6049.

Bailees engaging in business without license to forfeit $50 per day as fine to state:—Any bailee or bailees who shall engage, or attempt to engage, in the business of storing grain belonging to any other person or persons, whether for compensation or otherwise, without first having procured a license or certificate, as required by this act, shall forfeit to the State the sum of $50 for each and every day said bailee or bailees may be thus unlawfully engaged, which said forfeit shall be deemed a fine, and treated and collected in the same manner as are all other fines and penalties. *Id.* sec. 6050.

Bailee defined:—For the purpose of defining this act the term "bailee" or "bailees" shall be construed to mean any person, firm, or corporation, or persons, firms, or corporations keeping, controlling, managing, operating any warehouse, flour mill, grist mill, or other place wherein grain of any kind belonging to any other person or persons is received and kept in storage, whether for compensation or otherwise. *Id.* sec. 6051.

Carriers, warehousemen, etc., entitled to liens:—Any person who is a common carrier, or who shall, at the request of the owner or lawful possessor of any personal property, carry, convey, or transport the same from one place to another, and any person who shall safely keep or store any grain, wares, merchandise, and personal property at the request of the owner or lawful possessor threof, and any person who shall pasture or feed any horses, cattle, hogs, sheep, or other live stock, or bestow any labor, care, or attention upon the same at the request of the owner or lawful possessor thereof, shall have a lien upon such property for his just and reasonable charges for the labor, care, and attention he has bestowed, and the food he has furnished, and he may

retain possession of such property until such charges be paid. *Id.* sec. 7452.

Proceeding to enforce such liens:—If such just and reasonable charges be not paid within three months after the care, attention, and labor shall have been performed or bestowed, or the matrials for food shall have been furnished, the person having such lien may proceed to sell at public auction the property mentioned in the last two sections, or a part thereof sufficient to pay such just and reasonable charges. Before selling, he shall give notice of such sale by advertisement for three weeks, in a newspaper published in the county, or by posting up notice of such sale in three of the most public places in the city or precinct for three weeks before the time of such sale, and the proceeds of such sale shall be applied, first, to the discharge of such lien, and the cost and expenses of keeping and selling such property, and the remainder, if any, shall be paid over to the owner thereof; *Provided*, that nothing herein contained shall be construed as to authorize any warehouseman to sell more of any wool, wheat, oats, or other grain than sufficient to pay charges due said warehouseman on such wool, wheat, oats, or other grain; *and provided further*, that if any such warehouseman shall sell, loan, or dispose of in any manner, without the consent of the owner thereof any such wool, wheat, oats, or other grain, he shall, for each and every such offense, forfeit and pay to the owner of such wool, wheat, oats, or other grain, a sum equal to the market value thereof, and fifty per cent of said market value in addition as a penalty, the market value to be the price such article or articles bear at the time the owner thereof determines to sell the same, such value and penalty to be recovered by an action at law. *Id.* sec. 7453.

Special agreement not affected by preceding provisions:—The provisions of the last three sections shall not interfere with any special agreement of the parties. *Id.* sec. 7454.

Consignee or bailee must enter description of property and date:—Whenever any personal property shall be consigned to or deposited with any forwarding merchant, wharf, warehouse, or tavern keeper, or the keeper of any depot for the reception and storage of trunks, baggage, merchandise, or other personal property, such consignee or bailee shall immediately cause to be entered in a book kept by him a description of such property, with the date of reception thereof. *Id.* sec. 7595.

Consignee or bailee must notify owner, when:—If such property shall not have been left with such consignee or bailee for the purpose of being forwarded or disposed of according to directions received by such consignee or bailee at or before the time of the reception thereof, and if the name and residence of the owner of such property be known to the person having such property in his possession, he shall immediately notify the owner, by letter directed to him and deposited in the post-office, of the reception of such property. *Id.* sec. 7596.

Person in possession may sell property, when:—If any such property shall not be claimed and taken away within one year after the time it shall have been so received, the person having possession thereof may at any time thereafter proceed to sell the same in the manner provided in this chapter. *Id.* sec. 7597.

Notice of sale, how given:—Before any such property shall be sold, if the name and residence of the owner thereof be known, at least sixty days' notice of such sale shall be given him, either personally or by mail, or by leaving a notice at his residence or place of doing business; but if the name and residence of the owner be not known, the person having the possession of such property shall cause a notice to be published containing a description of the property for the space of six weeks successively in a newspaper if there be one published in the same county; if there be no newspaper published in the same county, then said notice shall be published in a newspaper nearest thereto in the state; the last publication of such notice shall be at least eighteen days previous to the time of sale. *Id.* sec. 7598.

Proceeding when property not claimed:—If the owner or person entitled to such property shall not take the same away and pay the charges thereon after sixty days' notice shall have been given, it shall be the duty of the person having possession thereof, his agent or attorney, to make and deliver to a justice of the peace of the same county an affidavit setting forth a description of the property remaining unclaimed, the time of its reception, the publication of the notice, and whether the owner of such property be known or unknown. *Id.* sec. 7599.

Inventory and order of sale:—Upon the delivery to him of such affidavit, the justice shall cause such property to be opened and examined in his presence, and a true inventory thereof to be

made, and shall annex to such inventory an order under his hand that the property therein described be sold by any constable of the precinct where the same shall be at public auction. *Id.* sec. 7600.

Sale by constable, notice of:—It shall be the duty of such constable receiving such inventory and order to give ten days' notice of the sale, by posting up written notices thereof in three or more places in such precinct, and to sell such property at public auction to the highest bidder, in the same manner as provided by law for sales under execution from justices' courts. *Id.* sec. 7601.

Return of constable and fees:—Upon completing the sale, the constable making the same shall indorse upon the order aforesaid a return of his proceedings thereon, and return the same to the justice, together with the inventory and the proceeds of sale, after deducting his fees. *Id.* Sec. 7602.

Justice to pay charges—Disposition of residue:—From the proceeds of such sale, the justice shall pay all legal charges that have been incurred in relation to such property, or a ratable proportion of each charge if the proceeds of said sale shall not be sufficient to pay all the charges; and the balance, if any there be, he shall immediately pay over to the treasurer of the county in which the same shall be sold, and deliver a statement therewith, containing a description of the property sold, the gross amount of such sale, and the amount of costs, charges, and expenses paid to each person. *Id.* sec. 7603.

County treasurer to make entry of amount received:—The county treasurer shall make an entry of the amount received by him, and the time when received, and shall file in his office such statement so delivered to him by the justice. *Id.* sec. 7604.

When owner may claim deposit:—If the owner of the property sold, or his legal representatives, shall, at any time within five years after such money shall have been deposited in the county treasury, furnish satisfactory evidence to the treasurer of the ownership of such property, he or they shall be entitled to receive from such treasurer the amount so deposited with him. *Id.* sec. 7605.

Proceeds not claimed in five years belong to county:—If the amount so deposited with any county treasurer shall not be claimed by the owner thereof or his legal representatives within

the said five years, the same shall belong to the county, and may be disposed of as the county court may direct. *Id.* sec. 7606.

Sale of decaying or perishable property:—Property of a perishable kind, and subject to decay by keeping, consigned or left in manner before mentioned, if not taken away within thirty days after it shall have been left, may be sold by giving ten days' notice thereof; the sale to be conducted, and the proceeds of the same to be applied, in the manner before provided in this chapter; *Provided*, that any property in a state of decay, or that is manifestly liable immediately to become decayed, may be summarily sold by order of a justice of the peace, after inspection thereof, as provided in section 7600. *Id.* sec. 7607.

Fees of justice and constable:—The fees allowed to any justice of the peace under the provisions of this chapter shall be $3.00 for each day's service; and to any constable, the same fees as are allowed by law for sales upon an execution, and ten cents a folio for making an inventory of property. *Id.* sec. 7608.

When railroad track must be laid to warehouse:—Whenever any warehouse already built or may hereafter be built within one hundred and fifty feet of the main line of any railroad in this state, with side track graded and ties laid down without expense to the company owning or operating said road, and not less than three hundred tons of freight is stored in said warehouse ready for transportation, then it shall be the duty of the said railroad company to lay down the track, with the necessary connections and switches; and shall from time to time furnish suitable freight cars necessary for the removal of such freight, and shall transport freight in carload lots to or from said warehouse in regular order, as other freight is transported on said road, whenever notice shall be given to the agent of the company or person in charge of the nearest station thereon; *Provided*, that said warehouses are so situated that trains can be started with the same power as in daily use on ordinarily straight and level track. *Id.* sec. 6902.

Failure to comply with last section, penalty for:—If any company or corporation owning or operating any railroad in this state shall fail to refuse to comply with the provisions of this act, the person injured by such failure or refusal shall be entitled to recover against such railroad company, in any court having

jurisdiction, a penalty of $300 for each week during which such neglect, failure, or refusal shall continue. *Id.* sec. 6903.

Larceny by bailee:—If any bailee, with or without hire, including every mortgagor of personal property having possession of property mortgaged, or any purchaser or lessee of personal property, obtaining the possession thereof under a written or printed contract of conditional sale, providing that the title thereto shall not vest in the purchaser until the unpaid balance of the purchase price is wholly paid for, and before same is wholly paid for, shall embezzle or wrongfully convert to his own use, or shall secrete or conceal, with intent to convert to his own use, or shall injure, destroy, sell, give away, remove from the county where situated when obtained, without the written consent of such bailor or vendor, or shall fail, neglect, or refuse to deliver, keep, or account for, according to the nature of his trust, any money or property of another delivered or entrusted to his care, control, or use, and which may be subject of larceny, such bailee, upon conviction thereof, shall be deemed guilty of larceny and punished accordingly, and if any such bailee shall deceive grain of any kind from different bailors, and mix the same and store it together in bulk in such case, in an indictment charging such bailee so mixing and storing grain with committing, with reference to said grain, the crime defined and made penal in this section, it shall not be necessary to charge in said indictment or prove on the trial that the ownership of said grain is in more than one of said bailors. *Id.* sec. 1956.

Above section construed:—In a prosecution under this section for larceny of wheat, the court said "The wheat having been delivered to and accepted by the defendant, constituted a bailment, and any exercise of dominion over it by him, inconsistent with the claim of the owner, amounted to a conversion of the grain." *State* v. *Humphrey*, 43 Ore. 44, 58.

Making false receipt or altering receipt of goods in warehouse:—If any person shall willfully or knowingly make or utter any receipt or other written evidence of the delivery into any warehouse, commission house, forwarding house, mill, store or other like building occupied by him or his employer, of any grain, flour, pork, beef, wool, or other goods, wares, or merchandise, which shall not have been so received or delivered previous to the making and uttering of such receipt or other written evidence

thereof, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one year nor more than five years, or by imprisonment in the county jail not less than three months nor more than one year. Lord's Oregon Laws 1910, sec. 1960.

DECISIONS AFFECTING WAREHOUSEMEN

A.

Bailment—Commingling of grain:—Where grain belonging to different depositors is mingled with grain of like kind by a warehouseman, the transaction between such depositors and warehouseman remains a bailment. *McBee* v. *Ceasar et al.*, 15 Ore. 62.

Same—Alleged title in another:—A bailee who alleges the title to be in another does so at his peril, and, by retaining the goods, makes himself a party to the controversy and must stand or fall by the title of his alleged bailor. *Wyatt* v. *Henderson,* 31 Ore. 48.

Conversion—Mingling of grain does not constitute:—The mingling of grain by a warehouseman with that belonging to other depositors does not constitute a conversion thereof. *Sears* v. *Abrams,* 10 Ore. 499.

Same—Consent of depositor to shipment by warehouseman:—If a warehouseman parts with property intrusted to his care without the consent, express or implied, of his depositor, such act amounts to a conversion. *McBee* v. *Ceasar et al.*, 15 Ore. 62.

Same—Custom of warehousemen of shipping grain at a certain season in the year, no defense unless authorized by depositor:—A warehouseman who had received a large quantity of grain belonging to different persons, which grain he had mingled together, delivered it to the defendant for the purpose of liquidating an account between them; it was *held* that when the warehouseman parted with the grain he was guilty of conversion, further that the plaintiff was not estopped to deny that the shipment by the warehouseman to the defendant was unlawful even if the fact was shown that the plaintiff knew it was the custom of the warehouseman to ship all the grain which he had in store at a certain season of the year. *Id.*

Same—Delivery pursuant to order of one not the owner:—Where one who was not the owner of certain goods, which were stored in a warehouse, contracted to sell them to the defendant, and the warehouseman delivered the same pursuant to order of the seller, it was *held*, in an action of trover brought by the owner, that this act constituted a conversion and that no demand was necessary before suit brought. Further, that the doctrine of *caveat emptor* applied, and that it was the duty of such purchaser to ascertain the rights of his vendor. *Velsian* v. *Lewis*, 15 Ore. 539.

Same—Warehouseman estopped to change position after suit brought:—In a suit against a warehouseman for the recovery of certain goods deposited with him or the value thereof, the defendant in his plea set forth that the plaintiff was not the owner of the goods. During the trial of the case the defendant offered proof to show that the reason of his refusal to deilver the goods was that there had been no payment or tender of storage charges. It was *held* that he was estopped to so change his position. *Wyatt* v. *Henderson*, 31 Ore. 48, following *Anderson* v. *Portland Flouring Mills Co.*, 37 Ore. 483.

F.

Carriers—Must accord shippers equal facilities:—When a railroad company permits a warehouse company to erect on its right of way a warehouse for the storage of grain, and establishes a rule that all orders for cars to be used for the shipment of grain from these warehouses shall come through the warehousemen operating these houses, the warehousemen are the agents of the carrier railroad company. It is the duty of the carrier to see that the warehousemen deal fairly with all shippers, themselves included, in ordering and distributing cars according to the respective shippers proportionate share, or the carrier should see to it directly, without the interposition of such agencies, that justice is done to all shippers according as its duty requires it to do. *U. S. ex rel Northwestern Warehouse Co.*, v. *Oregon R. & Nav. Co.*, 159 Fed. Rep. 975, 984.

I.

Commingling of grain—Loss to be borne in proportion to the amounts deposited:—Where a deficiency in the common mass of grain occurs without any fault of the depositors, the loss must

fall upon all in the proportion which the amount of grain each had deposited bore to the whole amount deposited. The depositors of grain which is thus mingled become tenants in common thereof and the several owners are compelled to sustain any loss *pro rata* which might occur by diminution, decay or otherwise. In order to make a depositor share in any such loss it is necessary that his grain be stored there at the time the loss occurs. If the warehouseman should deliver to any depositor a greater quantity than he would be entitled to from such residue, although less than the proper quantity to which he would have been entitled if there had been no loss or diminution, it would be a wrongful taking as well as a wrongful possession as against the other depositors. *Brown* v. *Northcutt,* 14 Ore. 529.

Same—Depositors are joint owners:—Grain deposited in a warehouse and commingled, belongs to the depositors, who are tenants in common thereof, having such an undivided interest therein as the quantity stored by each bears to the amount deposited, and a court of equity will decree a recovery of the grain or apportion the loss pro rata among the joint owners. *Tobin* v. *Portland Mills Co.,* 41 Ore. 269, 274.

N.

Loss by fire—Caused by negligence—Care of sulphuric acid:—The defendant, a common carrier, was liable for plaintiff's goods as warehouseman, the transit having terminated and it having stored the goods in its depot. The evidence showed that an employee of the defendant placed a carboy of sulphuric acid within the depot and that the place in which the acid was stored was near to that part of the depot which had been used by employees of the defendant when filling lamps, there being oil on the floor in consequence; further that the station agent did not know that the acid had been placed there and that it was the custom to place acids of an explosive or dangerous nature outside the depot. The acid was unloaded and as a result of a leak, the acid coming in contact with oil, an explosion and fire followed. On the above stated facts it was *held* that the defendant was guilty of negligence in the care and custody of plaintiff's goods and was liable therefor to him for their value. *Farmers' Loan & Trust Co.* v. *Oregon Ry. & Nav. Co.,* 73 Fed. Rep. 1003.

Delivery by warehouseman without order from owner—Liable for resulting damages:—Under a warehouse receipt which provided that the grain represented would be delivered upon the return of the receipt and payment of storage and other enumerated charges a warehouseman delivered the grain to the depositor without the return of the receipt and against his consent. The delivery was made by the shipment of the grain by the warehouseman to the depositor. It was *held*, the warehouseman was liable for all damages that would necessarily result from a breach of the agreement to keep the grain until called for but that this would not include expenses incurred by the depositor in unloading the grain from the cars. *Diamond Roller Mills* v. *Moody*, 125 Pac. 284; Affirmed on rehearing 126 Pac. 984.

Q.

Warehouse receipts—Not negotiable unless declared so by statute:—In the absence of a statute declaring warehouse receipts to be negotiable they are not negotiable instruments in the commercial sense, so as to bind the maker to the assignee in all cases. The holder of such a receipt takes no better title, nor occupies any more advantageous position than if the goods themselves were held by him. *Solomon* v. *Bushnell*, 11 Ore. 277.

Same—Represent the commodity:—A warehouse receipt for grain stored stands for and represents the property and its transfer is a valid transfer of the commodity itself. *Adamson* v. *Frazier*, 40 Or. 273, 276.

Same—Title to commingled grain in warehouse remains in depositor:—Form of receipts considered, and *held*, that persons depositing wheat in warehouse did not part with the title thereto. *Tobin* v. *Portland Mills Co.*, 41 Or. 269, 281, 284.

Same—Requisites of negotiability prior to warehouse act:—Prior to the passage of the warehouse act the transfer of a warehouse receipt which in terms stated that the property represented thereby would be delivered to the depositor upon the return of the receipt would not pass title to the property represented thereby. *Gill* v. *Frank & Koshland*, 12 Ore. 507, distinguishing, *Solomon* v. *Bushnell*, 11 Ore. 277.

Same—Issued by warehouseman to secure his own debt not valid unless property was in his possession at time of issuance:

C, a grain warehouseman, borrowed $1,000 of G and as security issued warehouse receipts against grain in his warehouse. Subsequently C died intestate and there was found to be a deficiency in the amount of wheat in the warehouse to satisfy warehouse receipts for wheat actually deposited. *Held*, that as there was a deficiency in the quantity of wheat that had been stored and should have been on deposit, thus showing there had been a violation of the statutes that the burden was on G to show that C owned the quantity of wheat pledged, and not having done so G failed in his proof. Though a warehouseman in the absence of statute to the contrary, may issue a warehouse receipt for his own goods in store, by way of sale, and confer an indefeasible title, yet, when he issues such receipt by way of pledge to secure his own debt, it is generally held that such a pledge is not good, as against subsequent *bona fide* purchasers of the goods unless there has been a valid actual or symbolical delivery thereof. *Milliorn* v. *Clow*, 42 Or. 169.

Same—Negotiability—Not a negotiable instrument within the meaning of the mercantile law:—Section 4205 of Hill's Ann. Laws declares warehouse receipts to be negotiable and by the statute such receipts, regardless of their form, are made negotiable in the sense that a transfer thereof by indorsement carries the absolute title to the commodity represented by the receipt, and a *bona fide* purchaser for value is not chargeable with knowledge of any notice of any equities between the original parties, as in case of the assignment of an ordinary chose in action; but the statute does not give to such receipts all the attributes of negotiable paper. A transfer of the receipt by indorsement may operate, under the statute, to transfer and vest the title of the goods in the purchaser, where before it would not, but the nature of the contract itself is unchanged. It is in no sense a negotiable instrument under the merchant law. It is simply a written acknowledgment by the warehouseman that he has received, and holds in store for the depositor, the amount and description of property named in the receipt, upon the terms and conditions therein stated, and is nothing more than a written contract between the parties, which by the statute is made negotiable for certain purposes. The word "negotiable" is evidently not used in the statute in the sense in which it is ordinarily applied to bills of exchange and promissory notes. *Anderson* v. *Portland Flouring*

Mills Co., 37 Ore. 483; *State* v. *Koshland*, 25 Ore. 178; *Shaw* v. *R. R. Co.*, 101 U. S. 557.

Same—Parol evidence admissible to show that person issuing such receipt acted in the capacity of agent:—Warehouse receipts are not negotiable instruments within the meaning of the rule prohibiting the admission of parol testimony to charge one not bound upon the face of the instrument, but in that respect they are simply contracts and such evidence is admissible to show that, although executed by and in the name of an agent, they are in effect the contract of the principal, and that he is bound thereby. *Anderson* v. *Portland Flouring Mills Co.*, 37 Ore. 483; *Barbre* v. *Goodale*, 28 Ore. 464.

Same—True contract may be shown by parol evidence—When: —In an action for value of wheat sold, the plaintiff alleged that the warehouse receipt did not contain and was not intended or understood to contain, all the terms of the agreement. *Held,* that a receipt issued by a warehouseman, like other written contracts, cannot be varied or contradicted by parol, but when silent as to the terms of the contract, such may be shown by parol, and when its language is ambiguous or uncertain it must, like any other contract, be interpreted in the light of surrounding circumstances. As the receipt was not signed by plaintiffs, it could not become a contract binding on them unless accepted as such. A mere delivery and acceptance would not make it a contract, if accompanied by a stipulation that it did not contain the agreement between the parties. *Hirsch* v. *Salem Mills Co.*, 40 Ore. 601, 604.

Same—Should disclose the contract—Criminal proceedings:— A warehouse receipt for wheat should state the condition or quality of the wheat deposited and the terms and conditions upon which it is stored. *Quaere,* As to whether or not an information would lie if receipt failed to contain these provisions. *State* v. *Humphreys*, 43 Ore. 44, 52, 60.

R.

Bill of lading—Not a contract:—As between the parties thereto a bill of lading is not a contract in writing such as will protect the same against the introduction of parol testimony to contradict or vary its terms but it is to be regarded only as an admission on the part of the consignor as to his purpose at the time of

making the shipment, and such admission is subject to be rebutted. *McBee* v. *Ceasar et al.*, 15 Ore. 62.

T.

Indictment of a warehouseman—Requisities:—An indictment charged the defendant, a warehouseman, under secs. 4201 and 4207 of Hill's Ann. Code with wrongfully issuing a receipt for a greater number of sheep-skins than was actually received. The indictment charged the defendant with operating as owner, a warehouse, and with being a warehouseman, and further alleged that he issued receipts for sheep-skins not actually in store at the time; it was not set forth, however, that the defendant operated a warehouse for the storage of sheep-skins and other commodities. It was *held* on demurrer that this indictment was defective. *State* v. *Koshland*, 25 Ore. 178; *State* v. *Stockman*, 30 Ore. 36.

U.

Constitutionality of statute imposing penalty upon warehousemen—Failure to specifically mention penalty in the title of act—Indictment:—A warehouseman was indicted for violation of the warehouse act of this State for issuing receipts for a greater amount of property than he had actually in store. The statute under which he was indicted is entitled, "Act to regulate warehousemen, wharfingers, commission men, and other bailees, and to declare the effect of warehouse receipts." The contention was made in behalf of the defendant that the part of such act which attempted to impose a penalty upon warehousemen was void under sec. 20, art. 4, of the State constitution which provides in effect that all matters contained in the statute shall be embraced in the title thereof. It was *held* that this contention could not be sustained; that this provision of the constitution should receive a liberal interpretation in order to promote, and not defeat, the beneficial purposes for which it was adopted. *State* v. *Koshland*, 25 Ore. 178.

Receiver—May enforce warehouseman's rights:—A receiver appointed to take charge of warehouse properties of B is an officer of the court, and wheat in the warehouse, held under contract of bailment with B, passed into the receiver's possession. B having had possession of the wheat and having a lien for his charges, and for the cost of sacks furnished, the receiver was authorized to collect for the same. *Tobin* v. *Portland Flouring Co.*, 42 Ore. 117, 121.

CHAPTER XXXVIII

PENNSYLVANIA

LAWS PERTAINING TO WAREHOUSEMEN

The Uniform Warehouse Receipts Act is in force in Pennsylvania. It took effect January 1, 1910, and may be found in Public Laws, 1909, p. 19, also this volume p. 1. To section 59 as contained in the Uniform Warehouse Receipts Act the following is added:

The following acts of Assembly, namely:

An act, entitled "An act relating to goods, wares, and merchandise in store and in transit, and to make receipts and bills of lading therefor negotiable," approved September twenty-fourth, one thousand eight hundred and sixty-six (Pamphlet Laws, one thousand eight hundred and sixty-seven, page one thousand three hundred and sixty-three);

An act, entitled "An act providing that whenever it shall happen that a receipt given by a warehouseman, warehousing company, storage or deposit company, or wharfinger has become lost, mislaid, or destroyed, the court, on the petition of the owner of such a receipt, may, in its discretion, order that the goods, wares, merchandise, petroleum, grain, flour, produce, commodity, or other property, for which it was given, shall be delivered without the production or return of such receipt," approved May twenty-fifth, Anno Domini one thousand eight hundred and ninety-three (Pamphlet Laws, page one hundred and thirty-three); and all other acts, or parts of acts, inconsistent with this act, are hereby repealed.

An Act. To prevent the issuing or transfer by any person, other than a warehouseman or person controlling a place for storing of goods, of any paper in similitude of a warehouse receipt, and prescribing punishment therefor.

Warehouse receipts, similitude of—Issuing or transfer of—Misdemeanor—Penalty:—Section 1. Be it enacted, &c., That

if any person, firm, or corporation shall issue, or shall pledge, sell, transfer, endorse, assign, deliver, or in any way pass, to another person, firm, or corporation the title to, any paper, not issued by a warehouseman, person, firm, or corporation owning or operating a warehouse or other place for the storing of goods, and not being a warehouse receipt, but made in the likeness or similitude as to design or contents of a warehouse receipt, and calculated to induce any person to believe such paper to be a warehouse receipt, and thereby shall obtain the signature of any person, firm, or corporation to any written instrument, or shall obtain from any person, firm, or corporation any chattel, money, promissory note, check, or other negotiable instrument or valuable security—every such offender shall be guilty of a misdemeanor, and on conviction shall be sentenced to pay a fine not exceeding five thousand dollars and undergo imprisonment not exceeding three years, or either or both, in the discretion of the court.

Approved—The 7th day of June, A. D., 1911. 1911 Public Laws, p. 701.

Attachments of goods in the hands of bailees regulated—Holder of receipt to be deemed garnishee—Dissolution of attachment:—Whenever any goods, wares or merchandise shall have been or shall hereafter be attached by writ of foreign or other attachment, in the hands, possession or custody of any warehouseman, wharfinger or other person who shall have issued for the same, any warehouse receipt or voucher, or any bill of lading or other receipt, when in transit by car or vessel, which warehouse receipt, voucher, bill of lading or other receipt, shall have been negotiated and transferred by indorsement or delivery, as provided in the act to which this is a supplement, the holder of any such warehouse receipt, voucher, bill of lading or other receipt, to whom the same shall have been transferred or delivered as aforesaid, although not named or summoned in, or served with such writ of attachment, shall nevertheless be deemed and taken to all intents to be a garnishee of the said goods, wares or merchandise attached in the said writ, as if the same were in his hands or possession; and the name of the holder of such warehouse receipt, voucher, bill of lading or other receipt shall upon application to the court wherefrom such writ has issued, be added to the record of the action as a garnishee of the said

goods, wares or merchandise; and thereupon the said court shall, upon the motion of the said garnishee, grant a rule upon the plaintiff in such attachment, to appear before the court at the time and place in such rule named, and there show cause why the attachment of such goods, wares or merchandise should not be dissolved, or the proceeds thereof, if the same shall have been sold by the order of said court, paid to the holder of such warehouse receipt, voucher, bill of lading or other receipt, upon his giving security as such garnishee, by recognizance and sufficient sureties to be approved by the court, or by one of the judges thereof in vacation, with condition that so much of the said goods, wares or merchandise, or of the proceeds thereof, after the sale of the whole or any part thereof, shall remain after the settlement or payment thereout, of the amount of any lien upon the said goods, wares or merchandise created by the advance of money or credit by the said holder of such warehouse receipt, voucher, bill of lading or other receipt, transferred or delivered as aforesaid, and also of all prior liens for storage, freight and other charges, shall be retained in the hands of said garnishee, to answer, if the plaintiff shall have execution of any judgment of the effects of the defendant in the action attached as aforesaid or to abide the further order of the said court. 1874, June 13, P. L. p. 285, sec. 1.

Bailees not to be liable, when the property is taken from them by legal process:—Where goods, wares or merchandise shall be taken from the possession of any warehouseman, wharfinger, carrier or other bailee, by writ of attachment, replevin or other legal process, such warehouseman, wharfinger, carrier or other bailee shall not be liable therefor to the owner of such goods, wares or merchandise, or to the holder of any receipt, voucher or bill of lading given for the same; saving and reserving, however, to such owner or holder all legal remedies for the recovery of the said goods, wares or merchandise from any person unlawfully detaining the same, or for the recovery of damages against any person unlawfully taking the same. *Id.* sec. 2.

Actions for property delivered by mistake:—Any carrier or other bailee of property, who has parted with its possession by mistake, to any person not entitled to the possession, may, after demand, maintain an action of replevin for the same, or if the

property cannot be found, an action of assumpsit, or trover and conversion, against the party converting or removing it. In the case of replevin, if there was no fraud in obtaining such possession, the plaintiff shall first tender to the defendant the freight or other proper charges which have accrued, at the time of the demand of possession. 1881, June 8, P. L. p. 86, sec. 1.

Trustees (appointed by the court in domestic attachment proceedings) may, by warrant, cause houses, chests, etc., of defendant, to be broken open in daytime:—It shall be lawful for the said trustees, by warrants, under their hands and seals, to cause to be broken open in the daytime, houses, chambers, shops, stores or warehouses of the defendant, or any doors therein, and any trunks or chests of the defendant, in which his goods or effects, books of account, or papers relating to his estate, shall be, or shall be reputed to be, and to seize the same for the benefit of his creditors. 1836, June 13, P. L. pp. 606, 612, § 26.

Cold storage act:—On May 16, 1913, the following "Cold Storage Law" was approved and took effect August 16, 1913. Laws Penna., 1913, No. 153, p. 216. As shown below sections 14 and 15 were amended by act approved July 7, 1913.

AN ACT FOR THE PROTECTION OF THE PUBLIC HEALTH AND THE PREVENTION OF FRAUD AND DECEPTION BY REGULATING THE STORAGE AND SALE OF COLD STORAGE FOODS, FIXING PENALTIES FOR THE VIOLATION OF THE PROVISIONS THEREOF AND PROVIDING FOR THE ENFORCEMENT THEREOF.

SECTION 1.—Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met and it is hereby enacted by the authority of the same: That this act shall be known and may be cited as the "Cold Storage Act of one thousand nine hundred and thirteen."

SEC. 2.—The term "cold storage" as used in this act shall mean the storage of food at or below a temperature of forty degrees Fahrenheit in a cold storage warehouse.

SEC. 3.—The term "cold storage warehouse" as used in this act shall mean an establishment employing refrigerating machinery or ice for the purpose of refrigeration or a place otherwise artificially cooled in which articles of food are stored for thirty (30) days or more at a temperature of forty degrees Fahrenheit or under.

SEC. 4.—The term "food" as used in this act shall mean the fresh flesh of animals and fresh products therefrom, the fresh flesh of fowls, fresh food fish, eggs and butter which have been stored in a cold storage warehouse.

SEC. 5.—The word "container" as used in this act shall be taken to mean any bag, band, barrel, basket, bottle, box, caddy, can, canister, carton, crate, firkin, hogshead, jar, jug, keg, stopper, vessel, wrapper, frozen bulk, or any similar or analogous utensil, receptacle, band, or wrapper in which food may be kept stored, sold or offered for sale.

Sec. 6.—The word "marked" as used in this act shall be taken to mean written, printed, stamped or painted, or any other means whereby words or figures may be indicated in or on a container or on any cover attached thereto.

Sec. 7.—The term "wholesome" as used in this act shall mean fit for human food.

Sec. 8.—No person, firm or corporation shall operate a cold storage warehouse without a license issued by the Department of Agriculture through its agent, the Dairy and Food Commissioner. Such license shall be issued only on written application stating the location of such warehouse. Upon receipt of the application said Dairy and Food Commissioner shall cause an examination to be made into the sanitary conditions of such warehouse. If it be found to be in a sanitary condition and properly equipped for the purpose of cold storage the Dairy and Food Commissioner shall cause a license to be issued authorizing the applicant to operate a cold storage warehouse during the period of one year from the date of such license. No license shall be issued until the applicant therefor shall have paid to the Dairy and Food Commissioner the sum of fifty dollars ($50.00). A license shall be required for each separate warehouse building.

Sec. 9.—Whenever any warehouse licensed under the provisions of this act or any portion of such warehouse shall be deemed by the Dairy and Food Commissioner to be in an unsanitary condition it shall be the duty of the Dairy and Food Commissioner to cause such warehouse or portion thereof to be closed until it shall be put in a sanitary condition. If such changes be not made within a reasonable time the Dairy and Food Commissioner may suspend or revoke the license granted for the operation of such warehouse. It shall be unlawful for any person, firm or corporation to operate any such warehouse or portion thereof when the same shall be closed by order of the Dairy and Food Commissioner.

Sec. 10.—It shall be the duty of every person, firm or corporation that shall be licensed to operate a cold storage warehouse to keep an accurate record of the receipts and withdrawals of food therefrom. The agents of the Dairy and Food Commissioner shall have free access to such records at all times. It shall be the duty of each person, firm or corporation licensed to operate a cold storage warehouse to file in the office of the Dairy and Food Commissioner on or before the sixth day of January, April, July and October of each year, a report setting forth in itemized particulars the kind and quantities of food products held in cold storage in such warehouse. The report shall be made on printed forms prepared and supplied by the Dairy and Food Commissioner. If in the judgment of the Dairy and Food Commissioner it shall be deemed better in enforcing this act to cause reports to be made at more frequent intervals than herein required said Dairy and Food Commissioner may cause such reports to be filed in accordance herewith.

Sec. 11.—It shall be unlawful for any person, firm or corporation, to place in any cold storage warehouse, to keep therein, or to sell, offer, or expose for sale any diseased, tainted or otherwise unwholesome food.

Sec. 12.—It shall be unlawful for any person, firm or corporation to place in any cold storage warehouse any slaughtered animals or parts thereof unless the entrails and other offensive parts have been first properly removed.

Sec. 13.—It shall be the duty of the Dairy and Food Commissioner to cause to be made a careful inspection of all cold storage foods with a view to determining whether the same are wholesome. Such inspection shall be made where such food is stored and each package of such food so inspected shall bear the marks, stamps, or other device for identification provided for in this section.

It shall be the duty of the Dairy and Food Commissioner to make such rules and regulations as he may deem proper relating to such inspection and supervision and to the cold storage of food and otherwise to secure the proper enforcement of this act. Duly authorized agents of the Dairy and Food Commissioner may at any reasonable time enter such warehouse and inspect the same.

Sec. 14. All food when deposited in cold storage warehouses, shall have plainly marked upon the container the date that such food shall be placed in such warehouses. If such food be not in a container, such marking shall be on such food, or on a tag or label securely and permanently attached thereto. Such food, or the container thereof, shall have marked plainly thereon the date of withdrawal of such food from such warehouses. The marking of food, in accordance with the terms of this section, shall be under such regulations as may be prescribed by the Dairy and Food Commissioner.

When fish are deposited in a cold storage warehouse it shall be lawful to mark upon the walls or door of the room in such warehouse, where the fish are stored, the month and year when such fish are therein stored. When such fish are withdrawn from such warehouse, the month and year of the storage of such fish shall be plainly marked on t e container in which such fish are packed. As amended by Act approved July 7, 1913, No. 388 Public Laws, 1913, p. 689.

Sec. 15. It shall be unlawful for any person, firm, or corporation, or any agent thereof, to sell, or offer or expose for sale, or have in possession with intent to sell, at wholesale, any food which is not marked and distinguished on the outside of each container, in a conspicuous place, by a placard with the words "wholesome cold storage food" printed thereon; such placard to be placed in a conspicuous position, in full view of the purchaser; and the words "wholesome cold storage food," on such placard, shall be printed in plain, uncondensed gothic letters, not less than one-half (½) inch in length; and, in addition, all such food shall be marked with the date when it is placed in any such cold storage warehouse, and with the date when it is withdrawn from such cold storage warehouse. In the case of fish, the date of first placing in a cold storage warehouse shall be the month and year when so first placed, and the date of withdrawal shall be the exact date of withdrawal.

There shall also be displayed upon every open container containing such food, in the same manner, in a conspicuous position, a placard with the words "wholesome cold storage food" printed thereon, in the same form as above described in this section; and when such food is sold from such container, or otherwise, at retail, before being delivered to the purchaser, it shall be wrapped in wrappers plainly stamped on the outside thereof with the words "wholesome cold storage food," printed or stamped thereon in letters one-fourth (¼) inch square, and such wrapper shall also contain the date of first placing such food in cold storage; and the said words "wholesome cold storage food," and the date of first placing such food in cold storage so stamped or printed on said wrapper, shall not be in any manner concealed, but shall be in plain view of the purchaser at the time of the purchase. In the case of fish, the date of first placing in a cold storage warehouse shall be the month and year when so first placed. As amended by Act approved July 7, 1913. No. 388 Public Laws, 1913, p. 689.

Sec. 16.—No person, firm or corporation shall sell, offer or expose for sale any of the herein named foods which shall have been held for a longer period of time than herein specified in a cold storage warehouse or warehouses, to-wit: Whole carcasses of beef or any parts thereof, four (4) months. Whole carcasses of pork or any parts thereof, six (6) months. Whole carcasses of sheep or any parts thereof, six (6) months. Whole carcasses of lamb or any parts thereof, six (6) months. Whole carcasses of veal or any parts thereof, three (3) months; dressed fowl

drawn, five (5) months; dressed fowl undrawn, ten (10) months; eggs, eight (8) months; butter, nine (9) months and fish, nine (9) months.

Sec. 17.—After food has been withdrawn from a cold storage warehouse for the purpose of placing it on the market for sale it shall be unlawful for any person, firm or corporation to return such food, or any portion thereof, to such warehouse, or any other similar warehouse. Subject to such regulations as shall be prescribed by the Dairy and Food Commissioner, food may be transferred from one cold storage warehouse to another provided that the total length of time such food shall remain in cold storage for the purpose of sale shall not exceed the time specified in section sixteen (16) of this act.

Sec. 18.—No food shall be sold or offered or exposed for sale in this State which shall have been placed or stored in any cold storage warehouse outside of this State unless it first shall have been marked as provided for in section fifteen (15) of this act. Provided, however, that no such food shall be sold or offered or exposed for sale in this State if the total length of time that such food has remained in cold storage shall exceed that specified in section sixteen (16) of this act.

Sec. 19.—It shall be unlawful for any person, firm or corporation to mark or cause to be marked any container of food with a mark or marks other than those required by this act to be marked on such food or container. It shall be unlawful for any person, firm or corporation to change or cause to be changed any mark or marks on any food or container after such mark or marks have been placed thereon. Provided, that nothing in this section shall apply to the marking of such container with the name and address of the owner thereof.

Sec. 20.—Nothing in this act shall be construed to prohibit the shipping, consigning or transporting of fresh food in properly refrigerated cars within this State to points of destination nor when received to prohibit the same being held in a cooling room for a period of forty-eight (48) hours, and provided further, that nothing in this act shall be construed to prohibit the keeping of fresh food in ice-boxes or refrigerators in retail stores while the same is offered or exposed for sale.

Sec. 21.—It shall be the duty of the Department of Agriculture, through its Dairy and Food Commissioner, to enforce all of the provisions of this act and to make all rules and regulations not otherwise herein provided necessary for the enforcement of the same.

Sec. 22.—That all license fees and fines and penalties imposed and recovered for the violation of any of the provisions of this act shall be paid to the Dairy and Food Commissioner or his agent and when so collected and paid shall thereafter be by the Dairy and Food Commissioner paid into the State Treasury for the use of the Commonwealth, in accordance with the provisions of this act.

Sec. 23.—Any person, firm or corporation that shall violate any of the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be sentenced for the first offense to pay a fine not exceeding five hundred dollars ($500.00), and for the second and each subsequent offense such person, firm or cororation shall be sentenced to pay a fine of not more than one thousand dollars ($1,000), and in addition thereto such person or the members of such firm or the officers of such corporation as the case may be with guilty knowledge of the fact may be sentenced to undergo imprisonment in the jail of the proper county for a period of not more than ninety (90) days or both at the discretion of the court.

Sec. 24.—All acts and parts of acts inconsistent with the provisions of this act are repealed.

Sec. 25.—This law shall take effect ninety (90) days after its final passage.

On May 20, 1913, the following act was approved, No. 170, Public Laws, 1913, p. 246:

An Act making it a misdemeanor for the keeper, owner, proprietor, or any person in charge of any storage or warehouse, pawn-shop, second-hand store, or junk shop, to conceal from any constable or sheriff, entrusted with the execution of any writ, the whereabouts of goods and chattels in their possession, belonging to another; defining what shall be evidence of such concealment, and providing a penalty therefor.

SECTION 1. Be it enacted, etc., That it shall be unlawful for any person, firm, or corporation, being in possession of goods and chattels of any description belonging to another, either as storage or warehouseman, pawnbroker, second-hand dealer, or junk-dealer, to conceal from any constable or sheriff, entrusted with the execution of any writ, any such goods or chattels, with intent to prevent any such goods or chattels from being taken or levied upon under any such writ.

SEC. 2. The refusal to disclose or point out to any such constable or sheriff the whereabouts of any such goods or chattels shall be evidence of the intent to conceal such goods and chattels, as provided for in section one of this act.

SEC. 3. Any keeper, owner, proprietor, or any person in charge of any such storage or warehouse, pawn shop, second hand store, or junk shop, who shall violate, neglect, fail, or refuse to comply with all of the provisions of this act, or any of them, shall be guilty of a misdemeanor and upon conviction before any court of competent jurisdiction be sentenced to pay a fine not exceeding five hundred dollars ($500), or undergo an imprisonment of not more than one year, or both, at the discretion of the court.

DECISIONS AFFECTING WAREHOUSEMEN

A.

Bailment—Bailee not required to open packages:—No bailee is bound, on giving a receipt for goods, to open the packages to see if they correspond with the name given to them. If he acts in good faith, he is not answerable to another who advanced money

NOTE: For statutory requirements in regard to the construction of warehouses and other buildings and inspection thereof see Pepper and Lewis Digest 2nd Ed. Vol. I, pp. 809 to 833, 1906, Sec. 460 and 1919 Sec. 485.

on the goods on the faith of the transaction; for the reliance was not properly on him, but upon the honesty of the man who procured the receipt. *Grier* v. *Nickle,* 1 Amer. L. Reg. 119.

Same—No implication of sale:—If a man places his property in the hands of another, such person being engaged in the business of receiving property of a like kind for storage, there is no implication that such bailee is the owner thereof. *Mann* v. *English,* 7 Pa. C. C. Rep. 637.

Same—Burden of proof:—The law will not intend negligence on the part of a bailee, who will be presumed to have acted according to his trust until the contrary is shown. But to throw the burden of proof on the bailor it is necessary that the bailee should show how the goods were lost. *Clark & Co.* v. *Spencer,* 10 Watts, 335.

B.

Warehouseman—Definition:—A warehouseman is one who receives and stores goods as a business for a compensation or profit. There is nothing in the Act of September 24, 1866, P. L. (1867) 1363, requiring him to hold himself out to the general public as such. *National Union Bank* v. *Shearer,* 225 Pa. 470, 485.

Ordinary care—Liable for negligence:—A bailee for hire is bound to exercise ordinary care and diligence and he will be liable only where the loss or damage results from a failure to exercise such degree of care. *Tower et al.* v. *Grocers' Supply & Storage Co.,* 159 Pa. St. 106; *McCarty* v. *N. Y. & E. R. R. Co.,* 30 Pa. St. 247.

Delivery—To a warehouseman—Facts which do not constitute a valid delivery:—In an action charging a railroad company with liability for the loss of goods which were alleged to have been delivered to it, the evidence showed as follows: That about seven o'clock in the evening, just about dark, when the defendant's warehouse was closed and locked for the night, that the drayman of the plaintiff opened the upper door and put the goods in, there being no one the grounds in charge of the warehouse and no one there representing the company to receive the goods. There was further evidence which showed that the drayman had, shortly after he deposited the goods as above stated, called out to the bill clerk of the railroad that he had left some goods of the plaintiff's and that he wanted the clerk to bill and ship them the next

morning. This was not addressed to the shipping clerk nor to the freight agent. Furthermore, the drayman knew that the bill clerk was not, in fact, that day on duty. *Held* this was not a delivery to an authorized agent of the defendant and therefore the defendants were not liable. *Spofford* v. *Railroad Co.,* 11 Super. Ct. 97; *Leidy* v. *Quaker City, etc., Warehouse Co.,* 180 Pa. St. 323.

Conversion—When demand and refusal unnecessary:—Ordinarily a sufficient demand and a refusal are both essential to constitute conversion. The demand is nothing without the refusal, but where there was not only a denial of the title in the owner but an assertion of title in, and delivery of the goods, to another after notice of the dispute between them, it was *held* that this clearly constituted a conversion of the property. *Clowes* v. *Hughes Bros.,* 3 Super. Ct. 561; *Taylor* v. *Hanlon,* 103 Pa. St. 504; *Hinckley* v. *Baxter,* 13 Allen, 139.

Safe deposit boxes—Contents not subject to attachment:—The contents of a safe deposit box are in the custody of the one renting the box and not of the company. They are not subject to attachment under the laws of this state. *Gregg* v. *Hilson,* 8, Phila., 91.

F.

Carrier—Warehouseman becomes such and hence an insurer by agreeing to haul goods for the public:—A warehouseman engaged as well in the business of moving or hauling household goods, and holding himself out to the public as such, held to be a common carrier and consequently liable for loss of household goods which he undertook to haul, which goods, while on the wagon, were destroyed enroute by fire from an unknown cause. *Lloyd* v. *Haugh,* 223 Pa. 148.

H.

Storage charges—Assignee of warehouse receipt liable for:—Where warehouse receipts for goods are assigned and the warehouseman notified of the assignment, he may recover from the assignee of the receipt the amount of the charges from the date of the assignment. *Rhoads* v. *Walsh,* 48 Pa. Super. Ct. 465.

Lien—Specific and not general in its nature:—A warehouseman has a specific, not a general lien on the goods stored with him, but he may deliver a part and retain the residue for his

charges on all the goods received by him under the same bailment, provided the ownership of the whole is in the same bailor. *Steinman* v. *Wilkins*, 7 Watts & Sargeant, 466. (See note given with this case in 42 Amer. Dec. 257.)

Same—Property stored by tortious bailee—Warehouseman cannot hold property for storage charges as against true owner: —The lessee of a piano sold under conditional sale contract stored same with a warehouseman under fictitious name. In a replevin suit by piano company (the real owner) for possession, *held*, that the warehouseman acquired no lien and has no right to retain possession of piano to enable him to collect the storage charges therefor from the real owner; and that such owner was entitled to piano. *Estey Co.* v. *Dick*, 41 Pa. Super Ct. 610.

K.

Attachment—Warehouseman may be made garnishee—Entitled to protection by bond if negotiable receipts have been issued: —If a warehouseman has issued negotiable warehouse receipts for goods deposited with him and he is made garnishee in a suit against his depositor, he is entitled to a bond from the plaintiff indemnifying him against any loss which he might suffer owing to negotiation of the receipts into the hands of *bona fide* holders. *Rondebush* v. *Hollis et al., defendants, and The Meadville Distilling Co., garnishee*, 21 Pa. C. C. Rep. 324.

M.

Pledge—Without knowledge of bailee—Replevin:—If the bailor of goods deposited with a warehouseman pledge them by a delivery of a receipt (not a "warehouse receipt") issued by an employee of the warehouseman without authority, and the warehouseman having no notice of such pledge, nor of such receipt, delivers the goods to another, a purchaser of a valid receipt subsequently issued by the warehouseman himself, such bailor cannot maintain replevin against the warehouseman for the goods. *People's Bank* v. *Gayley*, 92 Pa. St. 518.

Same—Same—Requisites of such a notice:—A bailee issued a receipt, which was not a negotiable warehouse receipt within the meaning of the statutes of this state, to one who had deposited property with him. At the time of the issuance thereof the attorney of the pledgor stated to the warehouseman's foreman

that the receipt was to be used for the purpose of borrowing money thereon and in his presence indorsed the receipt as follows:

"Please deliver inclosed pig-iron to W. H. Taber, Esqre., cashier, or order.

"HENRY G. MORRIS,
"Per ALEXANDER IRWIN, Att'y."

In an action brought by the bank with which the receipt had been pledged, against the defendant warehouseman, it was *held* that the judgment given for the defendant was correct, for the above transaction did not constitute such notice to the defendants as would make them liable; that it was the duty of the plaintiff bank either to have insisted on regular warehouse receipts, or to have immediately notified the defendant that it *held* the receipts, which he had issued for this iron, as security for a loan, but it did neither of these things, and that the loss was the resulting consequence. *People's Bank* v. *Etting & Groome*, 108 Pa. St. 258.

Same—Goods remaining on demised premises subject to distress for rent:—A furnace company manufactured a quantity of pig iron and piled it in a section of the yard of its premises, which section had been leased to a warehouse company. The warehouse company ran a wire fence around the material, but no notice of the sub-letting was given the landlord of the furnace company. The warehouse company issued its negotiable warrants for the iron on storage. *Held:* that the landlord had a right of distress for rent against the iron which was valid against the holders of the warrants. *American Pig Iron Storage Warrant Co.* v. *Sinnemahoning Iron & Coal Co.*, 205 Pa. 403.

Injury by water—Evidence—Instruction to jury:—The plaintiff, the owner of certain household goods, sued the defendant, a warehouseman, alleging that the same had been injured by dampness during the time when they were stored. The defendant contended that the goods were so damaged before he received them and offered evidence to show that his warehouse was impervious to rain. The defendant then requested the court to instruct the jury to find for him; this was refused, the question of negligence being left to the jury, a verdict was found for the plaintiff. The defendant took a writ of error upon which

the judgment of the lower court was affirmed. *Doyle* v. *Mays*, 7 Atl. Rep. 747.

N.

Loss by fire—Negligence must be shown:—In an action against a warehouseman for the loss of goods by fire, the burden of proof is upon the plaintiff to show that the fire occurred as a result of the negligence or want of ordinary care on the part of the defendant. *Tower et al.* v. *Grocer's Supply & Storage Co.*, 159 Pa. St. 106.

Same—Same—Instructions to jury:—The plaintiff who had stored goods with the defendant warehouseman alleged that at the time of the storage she had instructed the assistant in the office of the defendant to have the goods insured. Plaintiff testified that immediately after the fire she called upon the defendant and stated that she had left orders for such insurance to be placed on her goods. It was contended by the warehouseman that as the proofs failed to show essential elements of parol contract to insure, no agreement was proved. It was *held* that as the defendant was engaged in the storage business and had made it a part of such business to affect insurance when requested to do so by its customers that a contract made for that object being in the direct line of its business would not be one of insurance requiring certain necessary elements to constitute it, but would be an undertaking in connection with the bailment. A refusal to instruct the jury that the burden was upon the plaintiff to prove that at the time of the alleged agreement of insurance was entered into that the amount, rate, terms, premium, and risk to be insured against were all to have been arrived at, therefore *held* not to be error. *Id.*

Same—Pleading—Insufficiency of declaration:—The plaintiff sued the defendant, a warehouseman, for goods which he alleged were destroyed by fire while stored in the latter's warehouse. The declaration failed to state that there was any contract between the parties by which the defendant was to keep the goods insured, also that the loss resulted from gross negligence on the part of the defendant and that the defendant was a bailee for hire. The demurrer to such a declaration was sustained with leave to amend. *Heaton* v. *Knowles*, 14 W. N. Cas. 74.

Cold storage—Damage to goods—Burden of proof:—In an action against a warehouseman for the recovery of the value of eggs alleged to have been injured while in cold storage, the court instructed the jury that the plaintiff must establish that during the time the eggs were stored they were injured by the act of the defendant, and by his act alone, because if they were injured by any other act such as inherent decay, etc., the defendant was not responsible; further that the plaintiff should show by evidence that the eggs were in a good and satisfactory condition to be stored at the time the defendant received them and that the removal of the eggs from another warehouse to that of the defendant did not injure the eggs. The above charge *held* correct on appeal. *Boswell* v. *Collins*, 8 Atl. Rep. 845.

Same—What degree of negligence must be shown—Question for the jury:—The defendant warehousemen were sued for the value of certain poultry which the plaintiff alleged had been spoiled while stored in their cold storage warehouse. The court instructed the jury that the whole case turned upon the question as to who had caused the injury to the poultry. That if they found that the defendants had exercised due care in its preservation, or that the poultry was not in good condition when brought to the warehouse of the defendant that their verdict should be for the defendant. Further, that negligence on the part of the defendant could not be assumed from the mere fact that the goods of the plaintiff were injured, but that negligent acts or omissions must be conclusively proved. The court also charged that if the injury to the poultry resulted from any other cause than the negligence of the defendant, no matter what that cause might be, the defendants were not responsible. Finally that the jury could consider the fact that the plaintiff's goods were of a very perishable nature as relieving or tending to relieve the defendants from the charge that the poultry was spoiled through their negligence. Verdict was given for the plaintiff, and on appeal it was *held* that the above charge was correct, as the jury had had the question to determine as to whether the loss and injury suffered by the plaintiff was occasioned exclusively by the acts or omissions of the defendants. *Leidy* v. *Quaker City C. S. & W. Co.*, 180 Pa. St. 323.

Evidence—Negligence—Burden of proof on plaintiff:—In an action against one liable as a warehouseman for the loss of goods destroyed by fire, the burden is upon the plaintiff to show that the fire was the result of the defendant's negligence. *Nat. Line Steamship Co.* v. *Smart,* 107 Pa. St. 492.

Same—Must account for failure to deliver:—In an action against a warehouseman where it is shown that he failed to deliver goods intrusted to him on demand, it was *held* that he must show that the goods were delivered to somebody by the authority of the plaintiff. Simply being unable to account for the fact that the goods were not present when the defendant desired to redeliver them is no excuse. *Hoeveller et al.* v. *Myers et al.,* 158 Pa. St. 461.

Bill of sale passes title to personal property and warehousemen may deliver goods to vendee:—Plaintiff executed to M. a valid bill of sale absolute on its face for certain household goods and afterward stored the goods with defendant. Subsequently M. presented the bill of sale and defendant permitted him to take the goods and also four additional items of personal property not mentioned. *Held,* that defendant was not liable in trespass for permitting removal of first named goods, but was liable for the four additional items. *Klein* v. *Patterson,* 30 Pa. Super. Ct. 495.

Claim for breach of contract to redeliver goods may be made in defense of suit for charges:—Action by warehouseman for price of hauling, cleaning and storage of goods. Defendant owner claimed a failure by plaintiff to return a portion of the property taken out of his possession the value of which was greater than plaintiff's bill. Held to be a sufficient affidavit of defense. *Parker* v. *Shoemaker,* 46 Pa. Super. Ct. 99.

O.

Measure of damage—Household goods:—The true measure of damage in cases of this character (household goods and personal apparel) is compensation. The market price of an article is only a means of arriving at compensation; it is not in itself the value of the article, but is evidence of value. The just rule of damages is the actual value of the thing destroyed to him who owns it; taking into account its cost, the practicability and expense of replacing it, and such other considerations as in the particular

case affect its value to the owner. *Lloyd* v. *Haugh*, 223 Pa. 148, 157.

Q.

Warehouse receipts—Must be issued by a warehouseman—He must have possession of the property:—A person in charge of a warehouseman's wharf, or a warehouseman's clerk, cannot issue a valid warehouse receipt. In such a case the person attempting to issue the receipt is in charge of the goods, it is true, but he has not possession as required by the act of September 24, 1866; he holds for another,—his employer. *People's Bank* v. *Gayley*, 92 Pa. St. 518; *Bucher* v. *Commonwealth*, 103 Pa. St. 528; *Moors* v. *Jagode*, 195 Pa. St. 163; *People's Bank* v. *Gayley*, 9 W. N. Cas. 49.

Same—Same—Delivery:—A writing which by express language or by fair implication therefrom understood in the light of the circumstances under which and of the intent with which the instrument was issued, involving an acknowledgment by the signer of his possession of designated goods of another on storage and an obligation to deliver them to a specified person, or to his order, or to bearer, on the return of the instrument, will constitute a negotiable warehouse receipt, and its delivery, even without endorsement will transfer the title to the named goods. *National Union Bank* v. *Shearer*, 225 Pa. 470, 475, 481.

Same—Same—Goods must not belong to him:—The statutes of this state regarding the issuance of warehouse receipts are in derogation of the common law and establish an exception to the general course of business which is conducted on the presumption that the title of personal property accompanies possession. To bring a case, therefore, within the statute, all of the requisites thereof must be shown to exist. In order that a warehouse receipt shall be valid it must be issued by a warehouseman and not against his own goods and the warehouseman must be regularly engaged in the business of warehousing. *Tradesmen's Nat. Bank, etc.*, v. *Kent Mfg. Co., Jagode et al.*, 186 Pa. 556; *Moors* v. *Jagode*, 195 Pa. St. 163; *People's Bank* v. *Troutman*, 9 W. N. Cas. 54.

Same—Revenue tax on—Postal card:—A warehouseman was in the custom of notifying consignees by a postal card of the arrival of their goods. The card stated that the goods had been

received and were subject to the order of the consignee; further, that if not removed in ten days they would be stored, *held* that such a card is not taxable under the War Revenue Act which imposed a tax on warehouse receipts. That the Revenue Act imposed a tax upon the receipt, not upon the transaction and that this was not a warehouse receipt. *Merchant's Warehouse Co.* v. *McClain*, 112 Fed. Rep. 787. Affirmed, 115 Fed. 295.

Same—Negotiability—Bank holding as collateral a bona fide holder:—A warehouse receipt which states "this certificate is transferable by delivery" is negotiable and its transfer and delivery operates in law as a delivery of the property itself. If a bank accepts such a receipt in good faith as security for money loaned, it is not only a holder for value but also a *bona fide* holder of the receipt. *Exchange Bank* v. *Uhlman-Goldsborough Co.*, 5 Pa. Dist. Rep. 480; *Miller* v. *Browarsky*, 130 Pa. St. Rep. 372.

Same—Sale or pledge of bonded warehouse receipts transfers property interest:—A distilling company stored certain whiskey in its U. S. bonded warehouse and issued its own receipts for same. These receipts were deposited as collateral for a note, giving pledgee power to sell the receipts upon default of payment of the note. In action by Trustee in bankruptcy, *held*, that an innocent purchaser or pledgee of a bonded warehouse receipt secures a good title to the whiskey without taking actual possession. *In re Miller Pure Rye Distilling Co.*, 176 Fed. 606. Affirmed in *Taney* v. *Penn Bank*, 187 Fed. 689, 703.

Same—Negotiability—Assignee for benefit of creditors not a bona fide holder:—A voluntary assignee for benefit of creditors is not a *bona fide* purchaser for value of warehouse receipts in the hands of his assignor. He is merely the representative of his assignor and he enjoys only such rights as the assignor had. Therefore where one who had deposited goods in a warehouse and pledged some of the receipts therefor with a bank as security for a loan, such depositor afterward making an assignment for the benefit of his creditors, it was *held* that his assignee was estopped to deny the title of the bank to the goods represented by the receipts which it held, it appearing from the evidence that the depositor had withdrawn some of the goods deposited and

substituted others in the place thereof. *Brooks, Miller & Co.* v. *Western National Bank*, 16 W. N. Cas. 298.

Same—Same—Drawn in blank—Transfer without endorsement:—Where the parties so intend the delivery of warehouse receipts drawn in blank, without endorsement passes title to the property represented. *Sloan* v. *Johnson*, 20 Pa. Superior Court Reps. 643.

Same—Issued by debtor against his own goods—Change of possession essential—Creditors protected:—A milling company issued warehouse receipts (called "certificates") on barrels of flour stored in the basement of its warehouse and on grain in its tanks. The "certificates" were pledged as security for loans. It was *held*, following *Security Warehousing Co.* v. *Hand*, 206 U. S. 415, that a man cannot make a warehouseman of himself as to his own goods. That there having been no sufficient change in possession of the property to constitute a valid delivery, there was not a valid pledge and that the trustee in bankruptcy was entitled to the property as against the holders of the so-called warehouse receipts. *Fourth Street Natl. Bank* v. *Millbourne Mills Co.'s Trustee*, 172 F. 177, 181.

Same—Holding oneself out as a warehouseman—Effect:—Where a distiller had issued receipts upon which it was stated that they were warehouse receipts, the court charged the jury that where a man or firm hold themselves out as warehousemen, assert that they are warehousemen, holding goods on storage for a charge and issuing receipts upon which it is stated that they are warehousemen, that the public has a right to deal with them as such and the effect of the issuance of such receipts constitutes an agreement that they are to be governed by the statutes of Pennsylvania in relation thereto. Judgment was given for the plaintiff which was affirmed on appeal. *Rosenham* v. *Batjer*, 154 Pa. St. 544.

Same—Same—Delivery of goods in settlement of an antecedent debt not a sale as will defeat pledgee:—Certain goods were consigned to the plaintiff bank which held the bills of lading and other evidences of title. As a matter of fact, the bank was not the owner of the goods but held them simply as pledgee and the goods were delivered to the consignee. The bank delivered these evidences of title and took in return a storage receipt,

which however allowed the consignee to sell the goods but to account for the proceeds and pay to the plaintiff the amount due it. Under these receipts the bank retained the ownership of the goods and the consignee acquired no title which would avail it or its creditors. It had, however, authority to sell, and any valid exercise of that power would divest the bank of its title. The defendants were customers of the consignee and had sent to him a check in payment of a note which had been previously given him. The consignee failed to apply the proceeds of the check to the payment of these notes and the defendants were obliged to pay them at maturity. Subsequently the consignee delivered to the defendants the property upon which the plaintiff bank had loaned money to the consignee. In the action brought by the bank against the defendants for the recovery of the goods, it was *held* that the delivery to the defendants of the goods in question was not a sale in the ordinary course of business, such as would be a valid exercise of the authority to sell contained in the storage receipts. Therefore, judgment which was given for the plaintiff was affirmed on appeal. *Canadian Bank* v. *Baum & Sons,* 187 Pa. St. 48; *Brown Bros. & Co.* v. *Billington,* 163 Pa. 76.

Same—Same—Distiller's certificate—Indorsee estopped:—The defendants had indorsed distiller's certificates for a quantity of whiskey to the purchaser thereof who subsequently transferred the same to the plaintiff. The defendants afterwards attached the whiskey while in the warehouse in an action against the purchaser. The plaintiff brought an action against the defendants alleging that the defendants were estopped from raising the question as to the title of the plaintiff by the fact that they had indorsed the certificates and that as a result thereof the plaintiff had obained possession of them. This *held* to be correct and judgment given for the defendant was affirmed. *Rosenham* v. *Batjer,* 154 Pa. St. 544.

R.

Bills of lading—Effect of statute declaring them negotiable—Not "negotiable instruments":—A bill of lading, of which the consignee has obtained possession in a fraudulent manner and which has been negotiated to an innocent purchaser, does not pass the title to such purchaser as against the person who held its possession lawfully and from whom it was stolen. Where, there-

fore, the consignee fraudulently obtained possession of an original bill of lading which was attached to a draft and presented to him for acceptance by a messenger from the bank, who afterwards sold the original bill of lading, it was *held* that the title to the goods remained in the bank. The court further *held* that it was not the intention of the legislature when it declared that bills of lading should be negotiable by indorsement *in the same manner as bills of exchange,* that the nature and character of bills of lading was thereby put *in all respects* on the footing of instruments which are the representatives of money, commonly known as "negotiable instruments." *Shaw* v. *Railroad Co.,* 101 U. S. 557.

Same—Delivery passes title to property:—Where the intention of the parties is clear, the delivery of a bill of lading without formal endorsement transfers the title to the goods, the same rule applies to warehouse receipts, and holder may maintain action upon them. *Sloan* v. *Johnson,* 20 Pa. Super. Ct. 643, 648.

CHAPTER XXXIX

RHODE ISLAND.

LAWS PERTAINING TO WAREHOUSEMEN

The Uniform Warehouse Receipts Act is in force in Rhode Island. It took effect July 1, 1908, Pub. Laws 1908, Ch. 1549, p. 99. With the exception of the three last sections, the act is incorporated in the General Laws of Rhode Island, 1909, Title XXVIII, consisting of chapters 267 to 271 inclusive. Also this volume, p. 1.

Penalty for keeping or selling inflammable or explosive fluids not inspected:—Every person who shall keep or offer for sale in any place or building within the state, petroleum oil or any product thereof, or shall keep or offer for sale any mixture of naphtha or inflammable fluids for illuminating purposes that will flash or inflame at a less temperature or fire-test than one hundred and ten degrees Fahrenheit, or that has not been inspected, tested and the cask, barrel or package containing the same marked with the degrees Fahrenheit at which the contents thereof will flash or inflame in manner provided by section two of this chapter, and every person who shall empty any petroleum oil or any product thereof or any mixture of naphtha or inflammable fluids which shall be at any time brought into the state, out of the original packages in which it is brought into the state, until the same has been inspected by an inspector of kerosene, shall be fined not less than fifty dollars or be imprisoned not less than six months, and the name of every such person shall be published in some newspaper published in or nearest to the town where such offence was committed. General Laws, Rhode Island, 1909, Ch. 170, sec. 1.

Duties of the inspector of kerosene:—The inspector of kerosene shall inspect and test all petroleum oil, kerosene and coal oil and their compounds and every product or mixture thereof which may be manufactured, offered for sale or stored in the state, and every inspector shall legibly mark upon every cask, barrel or pack-

age so tested by him the degrees Fahrenheit at which the contents thereof are inflammable or will flash or explode, by cutting, branding or painting the same thereon, together with his official brand or stamp and the initials of his name. The owner of kerosene or other fluids made liable to inspection by the provisions of this chapter, shall pay to the inspector who shall inspect the same the sum of one dollar for every hour employed in such inspection, except in the city of Providence, where the inspector shall be paid in lieu of the foregoing, eight cents for every barrel of oil inspected in the barrel and four cents for every fifty gallons of oil in tanks or other receptacles inspected in bulk. *Id.* Sec. 2.

Not to apply to sale for exportation, manufacturing, mechanical, heating or lighting purposes under "blowpipe system":—Nothing contained in the preceding two sections shall be so construed as to apply to the sale or keeping for sale of crude oil, fuel oil, gas oil, naphtha, benzine or gasoline, or any other product of petroleum for exportation from the state or for manufacturing, mechanical, or chemical purposes, or for lighting or heating purposes under the blowpipe system. *Id.* sec. 3.

How to be kept for sale or stored—One hundred and fifty gallons; ten barrels; exceeding one hundred barrels:—Petroleum oil or any of its products or the compounds thereof that are not inflammable or which do not flash at a less temperature or fire-test than one hundred and ten degrees Fahrenheit, may be kept on sale or stored in the state in the following manner only and subject to the terms and conditions hereinafter named, namely: In quantities not exceeding one hundred and fifty gallons, in any store or warehouse; in quantities exceeding one hundred and fifty gallons and not exceeding ten barrels, in cellars at least four feet below the surface of the street, properly ventilated, and under buildings no part of which is occupied as a dwelling house; in quantities exceeding ten barrels and not exceeding one hundred barrels, in warehouses constructed of brick, stone or iron especially adapted to that purpose; in quantities exceeding one hundred barrels, in warehouses constructed of brick, stone or iron situated more than fifty feet distant from the nearest building or wharf, or, if within fifty feet from the nearest building or wharf, there shall be a wall of brick or stone between said warehouse and such building or wharf at least ten

feet high and sixteen inches thick; and all such warehouses shall be so constructed and arranged that no overflow or escape of the articles therein stored beyond the limits thereof can possibly take place. *Id.* Sec. 4.

Inspectors to examine the premises where petroleum oil is stored:—The inspectors of kerosene shall examine from time to time all premises within their respective towns wherein petroleum oil or any product thereof or any mixture of naphtha or inflammable fluid for illuminating purposes is stored or kept, and the owners and occupants of all such premises shall allow every inspector of kerosene at all times to enter upon and inspect such premises. *Id.* Sec. 5.

Petroleum oil, etc., not to remain in open air or on sidewalk:—In no case shall petroleum oil or any product thereof or any mixture of naphtha or inflammable fluid for illuminating purposes be allowed to remain in the open air or on any sidewalk beyond the front line of any building or in any street for a longer time than is actually necessary for the storage, shipment or delivery of the same, nor between the time of sunset of any one day and sunrise of the following day. *Id.* Sec. 6.

Penalty for violating provisions of chapter, or meddling with official brand:—Every person who shall violate any of the foregoing provisions of this chapter or shall knowingly or wilfully alter, efface or destroy any official mark or brand after the same has been placed by the inspector of kerosene or his deputies upon any barrel, cask or package in accordance with the provisions of this chapter, shall be fined not less than five hundred dollars nor more than one thousand dollars, or shall be imprisoned not exceeding six months. *Id.* Sec. 7.

Penalties for putting petroleum, etc., not inspected, into a branded cask:—Every person who shall, for the purpose of sale, put or cause to be put into any cask, barrel or other package which shall have been branded or marked by an inspector of kerosene in manner herein prescribed, any petroleum oil, kerosene or coal oil or naphtha or inflammable fluid or any mixture, product or component thereof or of either thereof, intended for sale, the same not having been first tested by such inspector in accordance with the provisions of this chapter, shall be fined not less than five hundred dollars nor more than one thousand

dollars, or shall be imprisoned not exceeding six months; and the name of every person convicted of any violation of this section shall be published in some newspaer published in or nearest to the town where such offence was committed. *Id.* Sec. 8.

Inspectors of petroleum, etc., to be appointed—Manner of storing may be prescribed by ordinance, with what penalties—Vacancy, how filled:—The town councils of the several towns, and the city councils of the cities of Newport and Providence, shall appoint annually one or more inspectors of petroleum oil, kerosene and coal oil, their products, compounds and components and may limit and prescribe by ordinance the place or places and manner of storing or safe keeping, and the quantity to be stored in any one place, and of sale within their respective towns and cities, of the said articles, their products, compounds and components and other like explosive substances, notwithstanding any provisions hereinbefore contained, and may inflict fines and penalties for the violation of such ordinances, not exceeding for any one offence two hundred dollars' fine and six months' imprisonment. Whenever a vacancy shall occur in the office of inspector of petroleum oil, kerosene and coal oil, the same shall be filled as soon as may be, for the remainder of the year, by the town council of any town or the city council of any city, by a new election. *Id.* Sec. 9.

DECISIONS AFFECTING WAREHOUSEMEN

A.

Bailment—Reasonably safe building:—Plaintiffs stored carriages in defendant's barn and paid storage therefor. The carriages were injured by the falling of the roof of the barn, due to its being overloaded with snow. *Held* that defendants were bound to furnish a building which was reasonably safe for such storage, and were liable if it proved to be unsafe, unless the defect was one they did not know of, and could not have discovered by the use of ordinary care. *Moulton & Remington* v. *Phillips & Sheldon,* 10 R. I. 218.

C.

Safe Deposit Boxes—Contents liable to attachment:—A sheriff charged with the service of a writ of attachment or an execution

would have authority to attach or to levy upon a sealed parcel in a safe deposit box belonging to the defendant, if he was able to find the same within his precinct, to open either of them to inventory the contents, and if the same were taken upon execution, to sell sufficient of the contents, not exempt from attachment, to satisfy such execution. *Tillinghast* v. *Johnson,* 82 Atl. 788.

H.

Storage charges—Storing merchandise for railway company—When company not liable for charges:—A common carrier stored in a warehouse merchandise at different times, the consignees of which either could not be found or refused to receive the goods. The warehouseman paid the freight charges and gave non-negotiable receipts which set forth in most of the instances the receipt of the goods from the carrier, the name of the consignee when marked on the goods, and the amount of freight charges paid; in a few instances the receipt of the goods from the carrier on account of the consignee; and in one or two instances the receipt of the goods from consignee or owner. *Held* that the non-negotiability of the receipts and the recital in them that the goods were received from the carrier did not render the carrier liable as a matter of law for the storage charges; *held* further that the terms of the receipts and the actions of the parties showed their understanding to be that the warehousemen received the goods as bailee for the owners and consequently the carrier was not liable for the storage charges due thereon. *Providence Warehouse Co.* v. *Providence & W. R. R. Co.,* 19 R. I. 423.

N.

Negligence—Definition:—Legally speaking, negligence is the want of that care which the law requires us to exercise—which it exacts as a duty. This care may be due to one individual and not to another, and therefore negligence in fact is not always negligence in law, for unless a party can show that some duty to him is violated, he shows no legal negligence. *Tower* v. *Providence & W. R. R. Co.,* 2 R. I. 404; *Blyth* v. *Topham,* 1 Cro. J. 158.

O.

Damages—Measure of:—The value of goods, converted by a warehouseman, at the time of the conversion is the measure of

damages. *Fifth Nat. Bank* v. *Providence Warehouse Co.*, 17 R. I. 112.

Q.

Warehouse receipts—Liability when goods delivered without return of—Demand:—A. procured a loan from the F. Bank, giving as collateral security a warehouse receipt as follows: "September 28, 1888. Received on storage of A. & Co., subject to the order of the F. Bank, three hundred and ninety cases of eggs. To be delivered according to the indorsement hereon, but only on the surrender and cancellation of this receipt, and on payment of the charges payable thereon." Across the face of the receipt was the word "Negotiable." The cases bore distinguishing marks. On November 1, 1888, the warehouseman delivered these cases to A. On March 11, 1889, the F. Bank brought *assumpsit* against the warehouseman for the value of the eggs, as A. had made default in the payment of his note. *Held* that the F. Bank was entitled to call for the identical cases stored, further that the warehouseman by his delivery to A. had violated his duty as bailee, and that he was not entitled to deliver to the F. Bank any other cases than those described in the warehouse receipt. Further *held* that by the delivery of the goods to A. a conversion thereof was shown and that the bank could maintain *assumpsit* without proof of demand. *Fifth Nat. Bank* v. *Providence Warehouse Co.*, 17 R. I. 112.

Same—Construction of clause therein limiting liability:—The receipt given by an express company as common carrier for a package received by it for transportation limited the liability of the company to fifty dollars, "at which the article forwarded is hereby valued unless otherwise expressed." The package was lost by the negligence of the express company. *Held* that the receipt was a valid contract between the shipper and the carrier, and that fifty dollars was the limit of the carriers' liability in the absence of a declaration in the receipt that the article was of higher value. *Ballou* v. *Earle & Prew Express Co.*, 17 R. I. 441.

CHAPTER XL

SOUTH CAROLINA.

LAWS PERTAINING TO WAREHOUSEMEN

Public warehousemen:—Any person engaged in the business of a warehouseman, or any corporation organized under the laws of this state and whose charter authorizes them to engage in the business of a warehouseman within this state, may become a public warehouseman and authorized to keep and maintain public warehouses for the storage of cotton, goods, wares, and other merchandise as hereinafter prescribed, and upon giving the bond hereinafter required. Code of South Carolina, 1912, sec. 2582.

To give bond:—Every person or corporation so authorized under the preceding section to become a public warehouseman shall give bond, to an amount based on the estimated value said warehouseman will provide storage for, to the clerk of the court of common pleas of the county wherein is situated the warehouse of said public warehouseman, with sufficient sureties, to be approved by the said clerk of court, for the faithful performance of the duties of a public warehouseman. *Id.* sec. 2583.

Liability on bond:—Whenever such warehouseman fails to perform his duty, or violates any of the provisions of this chapter any person injured by such failure or violation may bring an action in his name, and to his own use, in any court of competent jurisdiction, on the bond of said warehouseman; and in case he shall fail in said action he shall be liable to the defendant for any costs which the defendant may recover in the action. *Id.* sec. 2584.

When shall insure property left in warehouse — Receipt for goods:—Every such warehouseman shall, when requested thereto, in writing, by a party placing property with him, or it, on storage, cause such property to be insured for whom it may

concern. Every such warehouseman shall, except as hereinafter provided, give to each person depositing property with him for storage a receipt therefor, which shall be negotiable in form, and shall describe the property, distinctly stating the brand or distinguishing marks upon it, and if such property is grain the quantity and inspected grade thereof. The receipt shall also state the rate of charges for storing the property, and amount and rate of insurance thereon, and also the amount of the bond given to the clerk of the court as hereinabove provided: *Provided, however*, That every such warehouseman shall, upon request of any person depositing property with him for storage, give to such person his non-negotiable receipt therefor, which receipt shall have the words "non-negotiable" plainly written, printed or stamped on the face thereof. *Id.* sec. 2585.

No warehouse or other receipt for property to be given unless actually received:—No warehouseman, wharfinger, public or private inspector or custodian of property, or other person, shall issue any receipt, acceptance of an order or other voucher for or upon any goods, wares, merchandise, provisions, grain, flour or other produce or commodity to any person or persons purporting to be the owner or owners thereof, or entitled or claiming to receive the same, unless such goods, wares, merchandise, provisions, grain, flour or other commodity shall have been actually received into the store or upon the premises of such warehouseman, wharfinger, inspector, custodian or other person, and shall be in store or on the said premises as aforesaid and under his control at the time of issuing such receipt, acceptance or voucher. *Id.* sec. 2586.

Receipts of warehousemen not to be issued unless goods are in custody:—No warehouseman, wharfinger or other person shall issue any receipt or other voucher upon any goods, wares, merchandise, grain, flour or other produce or commodity to any person or persons as security for any money loaned or other indebtedness, unless such goods, wares, merchandise, grain or other produce or commodity shall be at the time of issuing such receipt in the custody of such warehouseman, wharfinger or other person, and shall be in store or upon the premises and under his control at the time of issuing such receipt or other voucher as aforesaid. *Id.* sec. 2587.

No duplicate receipt to be issued by warehouseman, etc., unless so marked:—No warehouseman, wharfinger, inspector, custodian or other person shall issue any second or duplicate receipt acceptance or other voucher for or upon any goods, wares, merchandise, provisions, grain, flour or other produce or commodity while any former receipt, acceptance or voucher for or upon any such goods, wares, merchandise, provisions, flour, grain or other produce or commodity as aforesaid, or any part thereof, shall be outstanding and uncancelled, without writing in ink across the face of the same "Duplicate." *Id.* sec. 2588.

No such goods to be removed without assent of person holding receipt:—No warehouseman, wharfinger, or other person shall sell or incumber, ship, transfer or in any manner remove beyond his immediate control any goods, wares, merchandise, grain, flour or other produce or commodity for which a receipt shall have been given by him as aforesaid, whether received for storing, shipping, grinding, manufacturing or other purposes, without the written assent of the person or persons holding such receipt. *Id.* sec. 2589.

Warehouse, etc., receipts transferable—Transferee's rights—Delivery of receipts—Receipts marked "Not Negotiable:"—Warehouse receipts given for any goods, wares, merchandise, cotton, grain, flour, produce or other commodity and chattels stored or deposited with any warehouseman, wharfinger or other person, may be transferred by indorsement and delivery thereof, to the purchaser or pledgee, signed by the person to whom the receipt was originally given, or by an indorsee of such receipt; and any person to whom the same may be so transferred shall be deemed and taken to be the owner of the goods, wares and merchandise therein specified, so far as to give validity to any pledge, lien or transfer made or created by such person or persons, but no property shall be delivered except on surrender and cancellation of said original receipt or the indorsement of such delivery thereon in case of partial delivery. The assignment of warehouse receipts which shall have the words "Not negotiable" plainly written or stamped on the face thereof shall not be effective until recorded on the books of the warehouseman issuing them. *Id.* sec. 2590.

Provisions inapplicable to goods replevied or removed by law:—So much of the preceding sections 2589 and 2590 as forbids the delivery of property except on surrender and cancellation of the original receipt or the indorsement of such delivery thereon, in the case of partial delivery, shall not apply to property replevied or removed by operation of law. *Id.* sec. 2591.

Warehouse receipt—Title to grain:—When grain or other property is stored in public warehouses in such a manner that different lots or parcels are mixed together, so that the identity thereof cannot be accurately preserved, the warehouseman's receipt for any portion of such grain or property shall be deemed a valid title to so much thereof as is designated in said receipt, without regard to any separation or identification. *Id.* sec. 2592.

Warehouseman shall keep a book of entry:—Every such warehouseman shall keep a book in which shall be entered an account of all his transactions relating to warehousing, storing and insuring cotton, goods, wares and merchandise, and to the issuing of receipts therefor, which books shall be open to the inspection of any person actually interested in the property to which such entries relate. *Id.* sec. 2593.

Action for damages under provisions as to warehousemen:—All and every person or persons aggrieved by the violation of any of the provisions of sections 2586 to 2591 may have and maintain an action at law against the person or persons violating any of the provisions thereof to recover all damages, immediate or consequential, which he or they may have sustained by reason of any such violation as aforesaid, before any court of competent jurisdiction, whether such person shall have been convicted as hereinbefore mentioned or not. *Id.* sec. 2594.

When warehouseman may sell property left with him:—Every public warehouseman who shall have in his possession any property by virtue of any agreement or warehouse receipt for the same, storage of the same, on which a claim for storage is at least one year overdue, may proceed to sell the same at public auction, and out of the proceeds may return all charges for storage of such goods, wares and merchandise, and any advances that may have been made thereon by him or them, and the expenses of advertising and sale thereof. But no sale shall be made until after the giving of printed or written notice of

such sale to the person or persons in whose name such goods, wares and merchandise were stored, requiring him or them, naming them, to pay the arrears or amount due for such storage, and in case of default in so doing the goods, wares and merchandise may be sold to pay the same at a time and place to be specified in such notice. *Id.* sec. 2595.

Service of notice of sale by warehousemen:—The notice required in the last preceding section shall be served by delivering it to the person or persons in whose name such goods, wares and merchandise were stored, or by leaving it at his usual place of abode, if within this state, at least thirty days before the time of such sale, and a return of the service shall be made by some officer authorized to serve civil process, or by some other person, with an affidavit of the truth of the return. If the party storing such goods cannot with reasonable diligence be found within this state, then such notice shall be given by publication once in each week for two successive weeks, the last publication to be at least ten days before the time of such sale, in a newspaper published in the city or town where such warehouse is located; or if there be no such paper, in one of the principal newspapers published in the county in which said city or town is located. In the event that the party storing such goods shall have parted with the same, and the purchaser shall have notified the warehousemen, with his address, such notice shall be given to such person in lieu of the person storing the goods. *Id.* sec. 2596.

Surplus after sale by warehousemen:—Such warehousemen shall make an entry, in a book kept for that purpose, of the balance or surplus, of proceeds of sale, if any, and such balance or surplus, if any, shall be paid over to such person or persons entitled thereto on demand. If such balance or surplus is not called for or claimed by such party or owner of said property within six months after such sale, such balance or surplus shall be paid by said warehouseman to the clerk of the court of the county in which said warehouse is located, who shall pay the same to the parties entitled thereto, if called for or claimed by the original owner within five years after the sale thereof, and such warehouseman shall at the same time file with said clerk an affidavit in which shall be stated the name and place of residence, so far as the same are known. *Id.* sec. 2597.

Disposition of perishable property in warehouses:—Whenever a public warehouseman has in his possession any property which is of a perishable nature, or will deteriorate greatly in value by keeping, or upon which the charges for storage will be likely to exceed the value thereof, or which by its odor, leakage, inflammability, or explosive nature, is likely to injure other goods, such property having been stored upon non-negotiable receipt, and when said warehouseman has notified the person in whose name the property was received to remove said property, but such person has refused or omitted to receive and take away such property and to pay the storage and proper charges thereon, said public warehouseman may in the exercise of a reasonable discretion sell the same at public or private sale, without advertising, and the proceeds, if there are any proceeds after deducting the amount of said storage and charges and expenses of sale, shall be paid or credited to the person in whose name the property was stored; and if said person cannot be found, on reasonable inquiry, the sale may be made without any notice, and the proceeds of such sale, after deducting the amount of storage, expenses of sale, and other proper charges, shall be paid to the clerk of the court of the county wherein said warehouse is situated, who shall pay the same to the person entitled thereto if called for or claimed by the rightful owner within one year of the receipt thereof by said clerk. *Id.* sec. 2598.

Liability of warehousemen on sale of perishable property:—Whenever a public warehouseman, under the provisions of the preceding section has made a reasonable effort to sell perishable and worthless property, and has been unable to do so, because of its being of little or no value, he may then proceed to dispose of such property in any lawful manner, and he shall not be liable in any way for property so disposed of. *Id.* sec. 2599.

Owners liability for storage where warehouse charges not covered by sale:—Whenever a public warehouseman, under the provisions of the two preceding sections, has sold or otherwise disposed of property and the proceeds of such sale or disposition have not equalled the amount necessary to pay the storage charges, expenses of sale, and other charges against said property, then the person in whose name said property was stored shall be liable to said public warehouseman for an amount which, added to the proceeds of such sale, will be sufficient to

pay all of the proper charges upon said property; or in case such property was valueless and there were no proceeds realized from its disposition, the person in whose name said property was stored shall be liable to said public warehouseman for all proper charges against said property. *Id.* sec. 2600.

Maximum rates for selling leaf tobacco upon floor of tobacco warehouse:—The charges and expenses of handling and selling leaf tobacco upon the floor of tobacco warehouses in this state shall not exceed the following schedule of prices, to wit: For auction fees, fifteen (15) cents on all piles of one hundred pounds or less, and twenty-five (25) cents on all piles of over one hundred pounds and less than two hundred pounds; fifty (50) cents per pile for piles of two hundred pounds or over. For weighing and handling, ten (10) cents per pile for all piles of less than one hundred pounds; for all piles over one hundred pounds, at the rate of ten (10) cents per hundred pounds; for commission on the gross sales of leaf tobacco in said warehouses, not to exceed two and one-half per centum. The proprietor of each and every warehouse shall render to each seller of tobacco at his warehouse a bill, plainly stating the amount charged for weighing and handling, the amounts charged for auction fees and the commission charged on such sale; and it shall be unlawful for any other charges or fees exceeding those herein named to be made or accepted: *Provided*, That the provisions of this section shall not apply to the counties of Sumter, Pickins and Chesterfield. *Id.* sec. 2601.

Warehousemen to keep tobacco statistics:—The warehousemen of each and every leaf tobacco warehouses doing business in this State shall keep a correct account of the number of pounds of leaf tobacco sold upon the floor of his warehouse daily. *Id.* sec. 2602.

Tobacco warehousemen to make reports:—On or before the fifth day of each month the said warehouseman shall make a statement, under oath, of all the tobacco so sold upon the floor of his warehouse during the past month and shall transmit the said statement at once to the Commissioner of Agriculture at Columbia, South Carolina. The reports so made to the Commissioner of Agriculture shall be so arranged and classified as to show the number of pounds of tobacco, the grade and price sold for the producers of tobacco from first hand; the number

of pounds, grade and price sold for dealers; and the number of pounds, grade and price resold by the warehouseman for his own account or for the account of some other warehouse. *Id.* sec. 2603.

Reports of Warehousemen as to tobacco to be kept and published:—The Commissioner of Agriculture shall cause said statement to be accurately copied into a book to be kept for this purpose, and shall keep separate and apart the statements returned to him from each leaf tobacco market in the State, so as to show the number of pounds of tobacco sold by each market for the sale of leaf tobacco, the number of pounds sold by producers, and the number of pounds resold upon each market, and the said Commissioner of Agriculture shall keep said books open to the inspection of the public, and shall, on or before the tenth day of each month, after the receipt of the reports above required to be made to him on or before the fifth day of each month, cause the said reports to be published in the bulletin issued by the Agricultural Department, and in one or more journals published in the State, having a large circulation therein. *Id.* sec. 2604.

"Warehouseman" defined:—A warehouseman within the meaning of sections 2602, 2603, 2604, 2605 and 2606 shall be construed to mean the person, firm or corporation operating a warehouse for the sale of leaf tobacco, whether such person, firm or corporation be the owner or lessee of said warehouse. *Id.* sec. 2605.

Commissioner of Agriculture to furnish blanks to warehouseman:—The said Commissioner of Agriculture shall prescribe the form of the statement herein required, and furnish a sufficient number of blanks to the several warehousemen of the State. *Id.* sec. 2606.

Railroad Commission to fix storage charges on freight:—Power is hereby conferred on the Railroad Commission of South Carolina, and they are required to fix and prescribe a schedule of maximum rates and charges for storage of freight made and charged by railroad companies doing business in this State, and to fix at what time, after the reception of freight at place of destination, such charges of storage shall begin, with power to vary the same according to the value and character of the freight stored, the nature of the place of destination, and residence of

consignee, and such other facts as in their judgment should be considered in fixing the same.

All the provisions of the Act creating said Railroad Commission and Acts amendatory thereof, prescribing the procedure of said Commission in fixing freight and passenger traffics, and hearing complaints of carrier and shippers, and of altering and amending said tariffs, shall apply to the subject of fixing and amending rates and charges for storage, as aforesaid. *Id.* sec. 2707.

Discrimination and excessive charges prohibited:—No railroad company shall make or maintain, directly or indirectly, any charge for storage or freight greater than that fixed by the Commission for each particular storage, nor shall they discriminate directly or indirectly by means of rebate, or any device in such charges, between persons. *Id.* sec. 2608.

Penalty for overcharge of storage:—If any railroad company shall violate the provisions of this Chapter, either by exceeding the rates of storage prescribed, or by discriminating, as aforesaid, the person or persons so paying such overcharge, or subjected to such discrimination, shall have the right to sue for the same in any Court of this State having jurisdiction of the claim, and shall have all the remedies, and be entitled to recover the same penalties and measure of damages as is prescribed in the case of overcharge of freight rates, upon making like demand as is prescribed in such case, and after like failure to pay the same. *Id.* sec. 2609.

Fees of Secretary of State for issuing charter for cotton holding associations:—The fees to be charged by the Secretary of State for the issuing of a charter to cotton holding and storage associations, organized within this State, shall be twenty-five dollars; and, further, that no commissions shall be charged on any increase of the capital stock of such association. *Id.* sec. 2844.

Rates of storage:—The rates of storage of cotton shall not exceed twelve and one-half cents per week for each bale of cotton; the charges for weighing cotton shall not exceed ten cents for each bale; and any person violating the provisions of this section, or either of them, shall forfeit to the owner of the cotton ten dollars for each offense, which may be recovered by him in any court of competent jurisdiction in this state. *Id.* sec. 2332.

Above section construed—Being penal must be strictly interpreted:—The defendant, a factor, was sued by his principal for having charged him with a greater amount for storage than the rate allowed by the above statute, and in the suit demanded the penalty therein provided for. It appeared that the defendant had not, in fact, stored the same and that he was in no sense a warehouseman. The property in question had been actually stored in a warehouse and the defendant had actually paid rates greater than allowed by the above statute for such storage. It was *held* that this statute, being penal, must be strictly construed and so construing it, it was perfectly manifest that the act prohibited by the statute is *making* of a charge for storage in excess of the rate there provided, not the *paying* of a charge in excess of the rate. Therefore, judgment given for defendant below was affirmed on appeal. *Holman* v. *Frost & Co.*, 26 S. C. 290.

DECISIONS AFFECTING WAREHOUSEMEN

A.

Bailment—When property liable for debt of bailee—Rule stated:—The rule which renders the property of the true owner liable for the debt of the bailee, or person in possession, is applicable only where the original credit was based on the property; and the debt must not be of doubtful beginning, but the plaintiff must show it to have been contracted subsequent to the possession of his debtor. *Ford* v. *Aiken*, 1 Strob. 93.

Same—Statute of limitations—When it begins to run:—Where goods held for safe-keeping are destroyed, the statute of limitations begins to run from the time of the loss, or, at the latest, from the time the owner has notice of the loss, and not from the time of demand. *Cohrs* v. *Fraser*, 5 S. C. 351.

B.

Ordinary diligence—Definition:—Ordinary diligence, in the law of bailments, is a relative term, and signifies that care which men of common prudence generally take of like articles of their own, at the time and in the place where the question arises. *Scott, Williams & Co.* v. *Crews*, 2 S. C. 522.

Delivery—To agent:—To charge a mandatory with an article lost, it is not necessary that, in every case, the delivery should

have been to him individually, or to one expressly or specifically authorized to receive for him; but an agency to receive may be implied in the same manner as such agency may be implied in relation to articles which were to be carried for hire. *Lloyd* v. *Barden & Brooks*, 3 Strob. 343.

Same—Depositing in warehouse—Stoppage in transitu:—The deposit of goods when they have reached their destination, in a warehouse, subject to the order and control of the buyer, is an executed delivery, as effectual to defeat the right of stoppage *in transitu*, as if they had been deposited in the warehouse of the buyer, and a deposit, in like manner, in the warehouse of the vendor, divests his right to retain for the price which may be unpaid. *Frazer* v. *Hilliard et al.*, 2 Strob. 309.

Same—When liability attaches:—In an action against a railroad company for the loss of goods in transportation, it appeared that the goods had never been removed from the car. The defendant attempted to show that its liability was that of a warehouseman, and that the transit had ended. It was *held* that there must be an initial point in the matter of the liability of warehousemen and that this initial point was the moment the storage begun, which was not shown in this case. *Hipp* v. *Southern Ry. Co.*, 50 S. C. 129.

Warehouseman — Pleading — Statute of limitations — Code — Practice:—In an action against one charged as a warehouseman, to recover the value of goods deposited for safe-keeping, the answer set up as defenses: (1) A denial of the alleged bailment; (2) an allegation that the goods were destroyed by an irresistible force, and without the fault of the defendant; and (3) a plea of the statute of limitations. *Held*, that the statute of limitations was properly pleaded, and could not be stricken out of the answer on the ground of inconsistency. An answer under the code may set forth as many legal defenses as were allowed under the former practice. A motion to strike out a defense as inconsistent with other defenses alleged in the answer should be made on notice and before trial, and the practice prescribed by the 21st rule of the circuit courts might well be followed in such cases. *Cohrs* v. *Fraser*, 5 S. C. 351.

H.

Storage charges—Implied contract to pay:—Where one allowed a warehouseman to receive and store his goods it was *held* that

there was an implied contract for the payment of reasonable storage charges therefor. *Devereux* v. *Fleming*, 53 Fed. Rep. 401, distinguishing *Somes* v. *Shipping Co.*, 8 H. L. Cas. 338.

Lien for storage charges—General balance—Must be under one transaction but not at one time necessarily—Charges continue after warehouseman holding under his lien:—A warehouseman's lien upon goods stored is specific and not general but if the goods were received under one transaction and form a part of the same bailment, he may deliver a part of the goods, and retain the residue for the price chargeable on all the goods received, provided the ownership of the whole is in one person. This phrase "under one transaction" does not mean at the same time, but pursuant to one transaction. A contention that a warehouseman was not entitled to his charges from the time he first asserted his lien on the goods up to the date of the judgment on the ground that during such period he held the goods for his own benefit, could not be sustained. The right to hold the goods until the charges are paid under the original contract of storage continues and the original contract does not cease until its charges are paid, remitted, or tendered. *Devereux* v. *Fleming*, 53 Fed. Rep. 401, distinguishing, *Somes* v. *Shipping Co.*, 8 H. L. Cas. 338.

I.

Trover — Bailee may maintain — When against owner: — The bailee of goods may maintain trover or trespass against any one but the legal owner; and a bailee whose possession is coupled with an interest, may maintain trespass, even against the owner, for tortiously taking the goods out of his possession. *Jones* v. *M'Neil*, 2 Bail. 466.

N.

Neglect—Proprietor of gin:—The proprietor of a cotton machine, for cleaning cotton-wool from its seed, who takes cotton to gin for a reward, is answerable as a bailee for ordinary neglect. *Foster* v. *Taylor*, 2 Brev. 348.

P.

Insurable interest—Warehousemen have, in stored cotton held in various ways:—Warehousemen insured certain bales of cotton stored with them in their own name on a form of policy intended

for warehouses containing the special clause "cotton in bales, their own or held by them in trust, or on commission, or on joint account with others, or sold but not delivered," contained in their warehouse. After destruction by fire the owner of the goods as assignee of the policy sued the insurance company thereon. An instruction by the court to the jury that the warehousemen had a right to insure in their own name under the above terms the cotton in their warehouse, that they had a right to sue therefor in their own name and having such right they could lawfully assign the same, was *held* correct. *Pelzer Mfg. Co.* v. *St. Paul Fire & M. Ins. Co.,* 41 Fed. Rep. 271.

Same—Right of subrogation as affected by conditions in lease of insured—Effect on policy:—Where the owner of goods, who was the assignee of the fire insurance policy taken out thereon by the warehouseman, sues on such policy for the recovery of the value of the goods which were destroyed, it was shown that the warehouse was constructed on ground leased from an adjacent railroad company and that the lease contained a covenant that the latter would not be liable for any damage or loss occasioned by its locomotives. This clause in the lease was not made known to the insurance company at the time of the issuance of the policy and the company contended that as its right of subrogation was thereby denied to it, its policy was therefore void. At trial the court left to the jury for its determination the question as to whether or not it would have made any difference in the risk if the warehouseman had stated this fact. The jury found that from custom in that part of the country it would have made no difference. It was *held* on appeal that this being the case that it would not enter into or become a part of the contract of insurance. *Pelzer Mfg. Co.* v. *St. Paul Fire & M. Ins. Co.,* 41 Fed. Rep. 271; *Home Ins. Co.* v. *Baltimore Warehouse Co.,* 93 U. S. 527.

R.

Bills of lading—Title passes by delivery as against attaching creditor of the vendor:—Where a bank honored a draft with a bill of lading attached thereto, it was *held* the title of the goods represented by the bill of lading passed to the bank as against a creditor of the vendor, who attached the goods subsequent to the

bank's possession of the bill of lading. *Union Nat. Bank* v. *Rowan*, 23 S. C. 339.

U.

State warehouse system—Law unconstitutional:—Act to create and operate a state warehouse system for storing cotton and other commodities, Laws 1912, p. 707, *held:* to be null and void in entirety. *State ex rel Lyon* v. *McCown*, 75 S. E. 392.

CHAPTER XLI

SOUTH DAKOTA.

LAWS PERTAINING TO WAREHOUSEMEN.

The Uniform Warehouse Receipts Act is in force in South Dakota. It was approved March 14, 1913, Session Laws, S. D. 1913, Ch. 364, p. 589. See also this volume p. 1.

By the 62d section it is provided that "Nothing herein contained shall be construed as repealing any part of Article One, of Chapter Eight of the Political Code of the State of South Dakota."

Powers conferred:—The duties imposed by the provisions of this article and the powers conferred therein devolve upon the board of railroad commissioners. Revised Codes, S. D. 1903, P. C. sec. 480.

Duties of Board:—It shall be the duty of the railroad commissioners of the state of South Dakota to supervise the handling, inspection, weighing, grading and storage of grain and seeds; to establish all necessary rules and regulations for the weighing and inspection of grain, and for the management of the public warehouses of the state, as far as such rules and regulations may be necessary to enforce the provisions of this article, or any law of this state, in regard to the same; to investigate all compaints of fraud or oppression in the grain trade of this state, and to correct the same as far as it may be in their power. *Id.* sec. 481.

Rules to be printed and published:—The rules and regulations, so established, shall be printed and published by said railroad commissioners in such manner as to give the greatest publicity thereto and the same shall be in force and effect until they shall have been changed or abrogated by said commissioners in a like public manner. *Id.* sec. 482.

Public warehouses defined:—That all elevators and warehouses in this state wherein and whereat grain is purchased,

received or handled are hereby declared to be public warehouses. *Id.* sec. 483.

License:—That it shall be lawful for the proprietor, lessee or manager of any warehouse or elevator, mentioned in the preceeding section to transact any business until a license has been procured from the railroad commissioners permitting such proprietor, lessee or manager to transact business as a public warehouseman under the laws of this state, which license shall be issued by the railroad commissioners upon a written application, which shall set forth the location and name and capacity of such elevator or warehouse and the individual name of each person interested as owner or principal in the management of the same; or, if the elevator or warehouse be owned or managed by a corporation, the name of the president, secretary and treasurer of such corporation shall be stated, and the said license shall give authority to carry on and conduct the business of a public warehouse, in accordance with the laws of this state; *Provided*, That it shall be unlawful for any warehouseman, company or corporation engaged in purchase and storage of grain, subject to the provisions of this article, to enter into any contract, agreement or combination with any other warehouse, company or corporation for pooling in the purchase and storage of grain by different and competing warehousemen, companies or corporations to divide between them the aggregate or net proceeds of margins or profits resulting from their said business as warehousemen, or any portion thereof, and in any case of such contract, agreement or combination for such pooling of their said business as warehousemen, each day of its continuance shall be deemed a separate offense. *Id.* sec. 484.

Bond and license fee:—The proprietor, lessee or manager of any warehouse or elevator in this state in which grain is stored shall, before receiving the license as hereinbefore provided, file with the commissioners granting the same a bond to the state of South Dakota, with good and sufficient sureties, in the penal sum of not less than $2,000 nor more than $50,000, for each and every elevator operated, proportioned to the capacity of the elevators or warehouses, in the discretion of said commissioners, for each license so granted, conditioned for the faithful performance of duty as a public warehouseman and full and unreserved compliance with all the laws of this state in relation thereto. A fee of

$1.00 shall be paid for each license by the person, association, or corporation applying for the same. *Id.* sec. 485, as amended by act approved Feb. 28, 1913, Laws, S. D., 1913, ch. 363, p. 589.

Transacting business without license—Penalty:—That any person, association or corporation who shall transact the business of public warehouseman, without first procuring a license as herein provided, shall be deemed guilty of a misdemeanor and on conviction shall be fined a sum not less than $100 for each and every day such business has been carried on. Every such license shall expire on the first day of August next following the issuance thereof, and the said board of railroad commissioners may at any time for good cause shown, in their discretion revoke any warehouseman's license by them granted, but the said warehouseman shall have the right of appeal from said decision to the circuit court in and for the county in which his warehouse is located, upon filing a bond in the sum of $200, conditioned for the payment of the costs of said appeal provided the same is not sustained by said court. *Id.* sec. 486.

Warehouse receipts:—All owners of such bonded warehouses and elevators so licensed shall upon the request of any person delivering grain at such warehouse give a warehouse receipt therefor, subject to the [order of the] owner or consignee, which receipt shall bear date corresponding with the receipt of the grain and shall state upon its face the quality and grade fixed upon the same; also the amount deducted for dirt or cleaning. All warehouse receipts issued for grain received shall be consecutively numbered, and no two receipts bearing the same number and series shall be issued during the same year. No warehouse receipt shall be issued except upon actual delivery of grain into such warehouse. No such warehouseman shall insert into any warehouse receipt issued by him any language in anywise limiting or modifying his liability as imposed by the laws of this state. *Id.* sec. 487.

Above section construed:—The above section will estop a warehouseman from setting up as a defense against a *bona fide* holder of a receipt, evidence that the goods were never stored in his warehouse. *Fletcher* v. *Great Western Elevator Co.*, 12 S. D. 643.

Grain to be delivered upon the return of the receipt:—On the return of any warehouse receipt properly indorsed, and the tender of all proper charges upon the property represented by it, such grain, or an equal quantity of the same grade and kind, shall be immediately delivered to the holder of such receipt as rapidly as due diligence, care and prudence, will justify. Nothing in this section shall be construed to mean the delivery of the identical grain specified in the receipt so presented; but an equal amount of the same grade and kind; and if the grain so delivered has not been cleaned by said warehousemen, there shall be added to the amount so delivered the amount originally deducted from the grain stored for dirt, which amount shall also be delivered; and when such grain is to be shipped from some terminal point where such elevator company or warehouseman is there doing business, such elevator company or warehouseman shall guarantee both weight and grade. Revised Codes S. D. 1903, P. C. sec. 488.

Report to railroad commissioners:—That every owner or manager of such licensed warehouse or elevator, at such times as the commissioners shall require, shall furnish to the commissioners in writing, under oath, a statement of the condition and management of his business as such warehouseman. Such report shall show the total number of bushels of each kind and grade of grain purchased and in store, and the number delivered out, and the number remaining in store at the date of the report. But no warehouseman shall be required to weigh the grain on hand more than once in each year; and the warehouseman shall, in addition to the statement herein, be required to furnish to the commissioners any other information regarding the business of his warehouse which the commissioners may require. *Id.* sec. 489.

Shall inspect warehouses:—The commissioners shall cause every warehouse and the business thereof, and the mode of conducting the same to be inspected, at such times as the commissioners may order, by one or more members of the commission, who shall report in writing to the commissioners the result of such examination; and the property, books, records, accounts, papers and proceedings, kept at each warehouse, so far as they relate to their condition, operation, or management, shall at all times during business hours be subject to the examination and inspection of such commissioners; and said board of commis-

sioners may, in all matters arising under the provisions of this law, exercise the power to subpœna and examine witnesses conferred upon said board by law in relation to railroad companies. *Id.* sec. 490.

Establish Grades:—The railroad commissioners shall, before the first day of September in each year, establish a grade for all kinds of grain bought or handled by any elevator or warehouse in this state, which shall be known as "South Dakota grades," but which shall not differ from grades in the state of Minnesota, and the grades so established shall be printed and published in the manner required by section 482 of this article: *Provided,* that no such publication shall be necessary except when changes are made in such grades, and then the changes so made only shall be published. And said board of railroad commissioners shall have supervision of the grading, weighing and shipping of all grain purchased or handled by public warehousemen in South Dakota; and all public warehousemen shall grade all grain purchased or handled by them in conformity with the established "South Dakota grades," as herein provided. Any person aggrieved at the weights or grades given by any warehouseman may appeal to the board of railroad commissioners, and it is hereby made the duty of said board to, without delay, inquire into said grievance and adjust the same in accordance with established standards. *Id.* sec. 491.

Money to be paid to Treasurer:—All moneys collected by the railroad commissioners, as herein provided for, shall be paid into the state treasury. *Id.* sec. 492.

Duty of state treasurer:—It shall be the duty of the treasurer of the state of South Dakota to receive all moneys aforesaid and all fines and penalties collected by virtue of this article, and to keep a separate account of the same, and pay the same only on the order of the railroad commissioners to defray the expense of carrying the provisions of this article into effect. *Id.* sec. 493.

Storage a bailment—Not a sale:—Whenever any grain shall be delivered to any person, association, firm or corporation, doing a grain warehouse or grain elevator business in this state, and receipts issued therefor, providing for a delivery of a like kind, amount and grade, to the holder thereof in return, such delivery shall be a bailment and not a sale of the grain so deliv-

ered; and in no case shall the grain so stored be liable to seizure upon process of any court in actions against such bailee, except actions by owners or holders of such warehouse receipts to enforce the terms of the same; but such grain shall at any and all times, in the event of the failure or insolvency of such bailee, be first applied exclusively to the redemption of outstanding warehouse receipts for grain so stored with such bailee. And in such event grain on hand in any particular elevator or warehouse shall first be applied to the redemption and satisfaction of receipts issued from such warehouse. *Id.* sec. 494.

Denial of storage not permissible:—No person, association, firm or corporation, doing a grain warehouse, or grain elevator business in this state, having issued a receipt for the storage of grain, as in this article provided, shall thereafter be permitted to deny that the grain represented thereby is the property of the person to whom such receipt was issued, or his assigns thereof, and such receipt shall be deemed and held, so far as the duties, liabilities and obligations of such bailee are concerned, conclusive evidence of the fact that the party to whom the same was issued or his assigns thereof, is the owner of such grain, and is the person entitled to make surrender of such receipt and receive the grain thereby promised to be delivered. *Id.* sec. 495.

Above section construed—Pledgee may sue in his own name:—Pledgee being assignee of receipt may sue in his own name. *Citizens' Nat. Bank* v. *Great Western Elevator Co.*, 13 S. D. 1.

Guilty of Larceny—When:—Every person, and every member of any association, firm or corporation doing a grain warehouse or grain elevator business in this state who shall after demand, tender and offer as provided in section 488, willfully neglect or refuse to deliver, as provided by said section, to the person making such demand, the full amount of grain of the kind and grade or market value thereof which such person is entitled to demand of such bailee, shall be deemed guilty of larceny and shall on conviction thereof be punished by a fine or imprisonment, or both, as is prescribed by law for the punishment of larceny. Revised Codes, S. D. 1903, P. C. 496.

On delivery the receipt shall be cancelled:—Upon the delivery of grain from store upon any receipt, such receipt shall

be plainly marked across its face the word "cancelled" and shall thereafter be void, and shall not again be put in circulation, nor shall grain be delivered twice upon the same receipt. No warehouse receipt shall be issued except upon actual delivery of grain into store in the warehouse from which it purports to be issued, and which is to be represented by the receipts, nor shall any receipt be issued for a greater quantity of grain than was contained in the lot or parcel stated to have been received. Nor shall more than one receipt be issued for the same lot of grain, except in cases where receipt for part of a lot is desired, and then the aggregate receipts for a particular lot shall cover that lot and no more. In cases where a part of the grain represented by the receipt is delivered out of store and the remainder is left, a new receipt may be issued for such remainder, but the new receipt shall bear the same date as the original and shall state on the face that it is balance of receipt of the original number, and the receipt upon which a part has been delivered shall be cancelled in the same manner as if it had all been delivered. In case it be desirable to divide one receipt into two or more, or in case it be desirable to consolidate two or more receipts into one, and the warehouseman consents thereto, the original receipt shall be cancelled the same as if the grain had been delivered from store, and the new receipts shall express on their face that they are a part of another receipt, or a consolidation of other receipts, as the case may be; and the numbers of the original receipts shall also appear upon the new ones issued, as explanatory of the change; but no consolidation of receipts of dates differing more than ten (10) days shall be permitted, and all new receipts issued for old ones cancelled, as herein provided, shall bear the same date as those originally issued as near as may be. *Id.* sec. 497.

Schedule of rates to be published:—Every warehouseman of bonded warehouses shall be required during the first week in September of each year to publish in one of the newspapers, daily if there be such, published in the city or village in which said warehouse is situated, a table or schedule of rates for the storage of grain in his warehouse during the ensuing year, which rates shall not be increased during the year, and he shall cause the same to be plainly printed on the warehouse receipts or tickets, and such published rates, or any published deduction of them shall apply to all grain received into such warehouse from any person or

source. The charges for storage or handling shall in all cases be equal and just, and shall be approved by the board of railroad commissioners before going into effect and shall not exceed the usual charges heretofore existing. *Id.* sec. 498.

Duties of Attorney general and State's attorney:—The attorney general of the state shall be *ex officio* attorney for the railroad commissioners and shall give them such counsel and advice as they may from time to time require, and he shall institute and prosecute any and all suits which said railroad commissioners may deem expedient and proper to institute, and he shall render to such railroad commissioners all counsel, advice and assistance necessary to carry out the provisions of this article or any law which said commissioners are required to enforce according to the true intent and meaning thereof. In all criminal prosecutions against a warehouseman for the violation of any of the provisions of this article it shall be the duty of the state's attorney of the county in which such prosecution is brought to prosecute the same to a final issue. *Id.* sec. 499.

Bonds—Where filed:—All official bonds required to be given by any person, company or corporation, pursuant to the provisions of this article, shall be filed in the office of the auditor of the state of South Dakota, and suit may be brought thereon in any court having jurisdiction thereof, for the use of any person or persons complaining of having sustained any injury by reason of a violation of the conditions thereof. *Id.* sec. 500.

Combinations unlawful—Rules must be posted:—It shall be unlawful for any proprietor, lessee or manager of any public warehouse to enter into any contract, agreement, understanding or combination with any railroad company, or any corporation, or with any individual or individuals by which the property of any person is to be delivered to any public warehouse for storage or for any other purpose contrary to the direction of the owner, his agent or consignee. Each warehouseman shall also keep posted at all times in a conspicuous place in his warehouse a printed copy of the schedule of grades established by the commissioners, and a printed copy of this article and of the rules and regulations for the management of warehouses established by the commissioners, to be furnished by the railroad commissioners. *Id.* sec. 501.

Penalty for violation of the provisions:—Any person, association or corporation, or any representative thereof, who shall knowingly cheat or falsely weigh any wheat or other agricultural products or who shall violate the provisions of any section of this article, or who shall do or perform any act or thing therein forbidden, or who shall fail to do and keep the requirements as herein provided, shall be deemed guilty of a misdemeanor and shall on conviction thereof be subjected to a fine of not less [than] one hundred dollars, nor more than one thousand dollars, and be liable in addition thereto to imprisonment for not more than one year in the state prison at the discretion of the court. *Id.* sec. 502.

Board shall test scales:—Said board of commissioners or any one or members thereof may, at any time, without notice, enter any public warehouse in this state and test and seal all weighing scales and measures used in conducting said warehouse business, and for that purpose the said commission is hereby authorized to provide itself with standard weights and measures. *Id.* sec. 503.

Producers not bound under the provisions of this act:—Nothing in this article shall be so constructed as to prevent the producers from marketing, storing or shipping their own products in any manner they choose, without procuring any license or giving any bonds under any provisions of this article. *Id.* sec. 504

Duty of commissioners on refusal of sites:—Whenever any person, firm or corporation shall have been refused the privilege of constructing a public warehouse upon the right of way, depot grounds or warehouse lots of any railway at any station thereon in the state of South Dakota, it shall be the duty of the board of railway commissioners to immediately, upon being notified of such refusal, to serve ten days' notice upon said railway company at the time of the investigation hereinafter provided for and then at the time so appointed appear at the station where such public warehouse site is desired and upon investigation and consideration of all the circumstances surrounding the case, determine whether the public welfare will be advanced by the construction of a warehouse at such station. *Id.* sec. 505.

Decision of the board—When final:—If the said board of railway commissioners shall after such consideration determine

that the public welfare would not be advanced by the construction of a warehouse at said station, the said board shall so inform the applicant for said site and said determination shall be final and no further procedure shall be had in the premises. *Id.* sec. 506.

Shall fix location:—If the said board of railway commissioners shall determine after due investigation that the construction of such warehouse is necessary and that the public welfare will be advanced thereby, then it shall be the duty of said board to fix the location of such public warehouse upon the right of way, depot grounds or warehouse lots of the railway company concerned, having in view in fixing such location the interests and convenience of said railway company and of the public, and a memorandum of such determination and of the location so selected shall be furnished to the applicant for such public warehouse site. *Id.* sec. 507.

Compensation for property taken:—In all cases where persons or firms invested with the privilege of taking private property for public use under this article shall determine to exercise such privilege, it shall be the duty of such person or firm to file a petition in the circuit court of the county in which the property to be taken is situated, praying that a just compensation to be made for such property may be ascertained by a jury. *Id.* sec. 508.

Petition—Contents of:—Such petition shall name the person or firm desiring to take such private property for public use as plaintiff, and the railway owning such property as defendant. It shall contain a description of the property to be taken and the purpose for which the same is to be so taken shall be clearly set forth in the petition. Such petition shall be verified in the manner provided by law for the verification of complaints in the circuit court, and the affidavit of verification shall contain the further statement that the proceeding is in good faith and for the purposes specified in the petition. *Id.* sec. 509.

Amendments to petition:—If any person or corporation who are proper parties defendant to such proceeding, or any property affected thereby, shall have been omitted from said petition or notice, the plaintiff may file amendments to the same, which amendments from the filing thereof shall have the same effect as though contained in said petition or notice. *Id.* sec. 510.

Plaintiff's motion for order:—At any time after filing the petition the plaintiff may issue a summons to the defendant or defendants which shall be entitled in the action or proceeding, and state the time and place of filing the petition, the nature of the proceeding, and contain a notice to the effect that if the defendant or defendants do not appear in said proceedings within twenty days from the service thereof, exclusive of the day of service, the plaintiff will apply to the court for an order to empanel a jury and ascertain the just compensation for the property proposed to be taken in such proceeding. *Id.* sec. 511.

Jurors—How Drawn:—If no appearance be made in said proceedings by the defendant or defendants within the time specified in the summons, the plaintiff upon affidavit of the default may apply to the court for an order directing the clerk of the court to draw and summon eighteen jurors to attend at the courthouse or place of holding the circuit court of the county to be specified in such order. Said jurors shall be drawn and summoned in the same manner as jurors are drawn and summoned for the regular or special term of the circuit court. If any of the defendants shall have appeared in such proceedings, the plaintiff shall give such defendants three days' notice of the time and place where application shall be made to the court for the order to draw and summon the jurors. *Id.* sec. 512.

Action—How tried:—At the time and place specified in the order mentioned in the preceding section, a special term of the court shall be held, at which the proceedings in empaneling the jury, trial, and rendering of the verdict or verdicts shall be conducted in the same manner as trials of actions in the circuit court. *Id.* sec. 513.

Pleadings in:—No other pleadings shall be necessary in such proceeding except the petition of the plaintiff, and such as may become necessary to enable the court to determine conflicting claims of the defendants to the compensation awarded by the verdict of the jury or some part thereof. *Id.* sec. 514.

Jury view premises—When: Upon the demand of any party to the proceedings, if the court shall deem it necessary, the jury may view the premises under the rules of law for viewing by the jury. *Id.* sec. 515.

Issue—Limited to what:—The only issue or question which shall be tried by the jury upon the petition shall be the question of compensation to be paid for the property so taken, but in case there shall be adverse claimants for such compensation for any part of such property, the court may require such adverse claimants to interplead, so as to fully determine the rights and interests in such compensation. *Id.* sec. 516.

Verdict:—Upon the return of the verdict the court shall order the same to be recorded, and shall enter such judgment thereon as the nature of the case may require and upon the payment or tender of the amount of damages assessed by the jury, with the clerk of said court for the benefit of such railway company said plaintiff may proceed to erect a public warehouse upon the site selected as aforesaid, and condemned as hereinbefore provided and to occupy the same. The right of occupancy only shall be vested in said plaintiff or his or their heirs or assigns. *Id.* sec. 517.

Extension of lands condemned:—Such condemnation of such right of way, depot grounds or warehouse lots and said right of occupancy shall only extend to so much of said grounds as is necessary for the accommodation of such public warehouse and for the convenient operation thereof, together with necessary grounds and free access thereto from the nearest public thoroughfare. *Id.* sec. 518.

Depositary for hire:—A deposit not gratuitous is called storage. The depositary in such case is called a depositary for hire. *Id.* C. C., Sec. 1376.

Ordinary care:—A depositary for hire must use at least ordinary care for the preservation of the thing deposited. *Id.* C. C., Sec. 1377.

Rate of compensation:—In the absence of an agreement or usage, a depositary for hire is entitled to one week's hire for the sustenance and shelter of living animals during any fraction of a week, and to half a month's hire for the storage of any other property during any fraction of a half month. *Id.* C. C., Sec. 1378.

Termination of deposit:—In the absence of an agreement as to the length of time during which a deposit is to continue,

it may be terminated by the depositor at any time, and by the depositary upon reasonable notice. *Id.* C. C., Sec. 1379.

Same--Full time paid:—Notwithstanding an agreement respecting the length of time during which a deposit is to continue, it may be terminated by the depositor on paying all that would become due to the depositary in case of the deposit so continuing. *Id.* C. C., Sec. 1380.

Warehouse Law Adopted in 1909.

Chapter 77 of the Session Laws of 1909 is as follows:

AN ACT Entitled to Require Public Grain Warehousemen Shipping Grain to Terminal points where State Weighing, Inspection and Grading is Had to Transmit the Certificates of Such Weighing, Inspection and Grading or True and Correct Copies Thereof to the Person Having Immediate Charge of the Warehouse or Elevator from Which Such Grain is Shipped.

Be It Enacted by the Legislature of the State of South Dakota:

Section 1. Every person, association or corporation transacting the business of a public warehouseman in this state from whose warehouse or elevator grain shall be shipped to any terminal point at which such grain shall be weighed, inspected and graded by the officers of the state wherein such terminal point is situated, and certificates of such weighing, inspection and grading shall be issued by such officers, and every consignee of grain so shipped shall transmit and deliver such certificates or true and correct copies thereof to the person having the immediate charge of the warehouse or elevator from which such grain was shipped, within ten days after the issuance of such certificates, and the said certificates shall be open to the inspection and examination of any person who has an ownership interest in such shipment.

Sec. 2. Any person, association or corporation violating the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than fifty dollars nor more than one hundred dollars for each and every offense.

Sec. 3. The board of railroad commissioners may revoke the license of any public warehouseman found, upon hearing before it, to have violated the provisions of this act.

Approved February 24, 1909.

Warehouse Law Adopted in 1911.

Chapter 261 of the Session Laws of 1911 is as follows:

AN ACT Entitled, An Act Providing a Method of Determining the Rental Value of Warehouse, Coal Shed or Other Building Sites to be Paid by Owners of Public Warehouses, Coal Sheds or Other Buildings Upon the Right-of-way, Depot Grounds or Warehouse Lots of Any Railroad Company.

Be It Enacted by the Legislature of the State of South Dakota:

Section 1. Whenever the owner of any public warehouse, coal shed or other building upon the right of way, depot grounds, or warehouse lots of any (railroad) company in the state of South Dakota shall fail to

agree with (said railroad company as to a fair rental value of) such warehouse, coal shed or other building site, it shall be the duty of railroad commissioners immediately after notice of such disagreement, to fix and determine the fair annual rental value of such warehouse, coal shed or other building site, and to notify in writing both the railroad company and owner of such warehouse, coal shed or other buildings of the rental value so fixed and determined.

Sec. 2. Either the railway company or owner of such warehouse, coal shed or other buildings within twenty days after receiving such notice, may appeal to the circuit court of the country in which such warehouse, coal shed or other building is situated, from the decision of the board of railway commissioners fixing and determining the annual rental value of such warehouse, coal shed or other building site.

Such appeals shall be taken by serving a notice of appeal in writing upon the adverse party and upon the secretary of the board of railway commissioners, and filing the original notice of appeal with proof of service thereof with the clerk of the circuit court of said county. Within ten days after service of said notice of appeal upon the secretary of the board of railwoy commissioners, such secretary shall make and cause to be filed with the clerk of said circuit court a certified copy of the order of the board of railway commissioners appealed from.

Sec. 3. At the next term of the circuit court of said county, unless continued for good cause, without any pleadings raising any issue of fact, the question of the fair annual rental value of such warehouse, coal shed or other building site shall be submitted to a jury for determination, and judgment shall be entered by the court in accordance with the verdict of the jury.

Sec. 4. Unless an appeal from the decision of the board of railway commissioners shall be taken within the time mentioned in Section 2 of this act, the decision of said board shall be final and the amount fixed and determined by said board shall be paid, and if appeal from, then the amount fixed by the verdict of the jury and judgment of the court shall be paid, by the owner of such warehouse, coal shed or other building, to the railway company for the rental of such warehouse, coal shed or other building site.

Approved March 7, 1911.

That whenever any lessee, owner or manager of any warehouse or elevator in this state shall receive grain into such elevator or warehouse, and the same is not checked out by the seller within two days from and after the time such grain was weighed in, such grain so weighed in shall constitute stored grain, and any lessee, owner or manager of such elevator or warehouse weighing in such grain, shall comply with all the provisions of the laws now in force governing bonded warehouses and elevators for storing grain. Act approved March 14, 1913, Laws South Dakota, 1913, Chap. 362, page 588, sec. 1.

Penalty:—Any person or persons, firm or corporation owning or leasing a warehouse or elevator and is engaged in the buying and selling of grain either by himself or through a man-

ager or agent, and who shall fail to comply with the provisions of this act, shall be guilty of a misdemeanor and shall be punished by a fine of not less than five ($5.00) dollars, nor more than fifty ($50.00) dollars. *Id.* sec. 2.

DECISIONS AFFECTING WAREHOUSEMEN

B.

Demand—Case when unnecessary—Warehouse closed:—The The plaintiff bank was the pledgee of a warehouse receipt deposited with it as collateral security for the payment of a note. At the time of the maturity of the note, the elevator or warehouse was closed and there was no person in charge on whom demand could be made, nor was it shown that the defendant had any other elevator or warehouse in the state at which demand could be made, and of which the plaintiff had knowledge. It was *held* that it was not necessary for the plaintiff to show any other or further effort to make demand. *Citizens' National Bank* v. *Great Western Elevator Co.*, 13 S. D. 1.

Right of stoppage in transitu—After goods stored in warehouse:—The right of stopage in transitu may continue to exist even though the goods have been stored in a warehouse. In legal contemplation goods though stored may still be in transit, where they are stored by the carrier. *Powell* v. *McKechnie*, 3 Dak. 319.

N.

Pledge—Pledgee may maintain action in his own name:—The pledgee of a warehouse receipt, under the statute of this state, may maintain an action for the conversion of the goods represented thereby. Such pledgee is entitled to maintain such action in his own name, accounting to the pledgor for any amount he may recover. *Citizens' National Bank* v. *Great Western Elevator Co.*, 13 S. D. 1.

Q.

Warehouse receipts—False—Estoppel—Measure of damages:—The plaintiff, a *bona fide* holder of a warehouse receipt, brought an action against the corporation which had issued the same for the value of grain represented thereby. It appeared from the evidence that the defendant corporation at the time of issuing the

receipt was operating numerous warehouses within the state of South Dakota. The receipt was issued by an agent of the defendant when the grain which it represented was not actually in store. It was transferred by the agent to the plaintiff who took without any knowledge of fraud and he paid full value therefor in cash. It was *held* that the defendant was liable for the act of its agent in fraudulently issuing this receipt, and that the defendant was estopped to deny that it had actually received the grain represented thereby. Further *held* that the plaintiff was entitled to recover not the value of the wheat, but that his claim was limited to the amount which he had paid for the warehouse receipt. *Fletcher* v. *Great Western Elevator Co.*, 12 S. D. 643; *Maynard* v. *Insurance Co.*, 34 Cal. 48.

CHAPTER XLII

TENNESSEE

LAWS PERTAINING TO WAREHOUSEMEN.

The Uniform Warehouse Receipts Act is in force in Tennessee. It was approved April 28, 1909. Acts Tennessee 1909, Ch. 336, p. 1226. See also this volume, p. 1.

In view of the fact that the sixtieth section does not expressly repeal chapter 84 passed at the same session nor sections 3601 to 3608 inclusive of the Code of Tennessee, 1896, Shannon, it was thought better to include these laws herein.

Lien for storage charges—Be it enacted by the General Assembly of the State of Tennessee: That every warehouse company, firm, person, or persons engaged in the warehouse or storage business, who shall receive in his or their possession any goods, wares or merchandise in store for hire, shall have a lien thereon superior to unregistered liens or titles for the storage charges that may accrue thereon, together with any necessary expense incurred in making the sale, as provided by Section 2 hereof; provided, however, that where sale of goods or chattels are made and a lien retained by the seller for the purchase money, such lien, whether registered or not, shall be superior to the lien hereby created. Ch. 84 Acts of Tennessee, 1909, p. 248, sec. 1.

Be it further enacted: That after such storage charges or any part thereof shall be in default for a period of six months, such warehouse company, firm, person, or persons that shall have received such goods, wares, or merchandise for storage may enforce the lien hereinbefore provided for by a sale of the property so stored, after first advertising the same by printed or written notices posted at the door of the courthouse in the county where such property is stored, and also at two public places in said county, said notices to be posted at least thirty days before date of sale, and shall specify the articles to be sold, time and place of sale, and a copy thereof transmitted

through the mail to the address of the person in whose name the property is stored, if known, by placing the same in the post office at least twenty days before the sale. *Id.* sec. 2.

Be it further enacted: That from the proceeds arising from such sale there shall be deducted the storage charges, together with the necessary expenses of sale, and the balance, if any, shall be held for the owner thereof; and every such warehouse company, firm, person, or persons shall keep a permanent record of such sales, showing description of articles sold, time of sale, amount received, and amount of storage charges and expenses. *Id.* sec. 3.

Be it further enacted: That this act take effect from and after its passage, the public welfare requiring it. *Id.* sec. 4.

Passed February 12, 1909, approved February 19, 1909.

Warehousemen:—All persons, firms, companies, or corporations who shall receive cotton, tobacco, corn, wheat, rye, oats, hemp, whisky, or any kind of produce, wares, merchandise, or any description of personal proerty, in store, for hire, or who shall undertake to receive and take care of, or to sell, the same for other persons, shall be deemed and taken to be a warehouseman. Shannon's Code of Tennessee, 1896, sec. 3601.

Warehouse receipt not to be issued until produce is delivered:—No warehouseman shall issue a receipt for cotton, tobacco, grain, hemp, whisky, or any kind of produce, wares, merchandise, or any description of personal property, unless such produce or personal property be in the custody of such warehouseman, and in store, or upon the premises and under his control, at the same time of issuing such receipt. *Id.* sec. 3602.

Duplicate receipts to be so marked:—No warehouseman shall issue any second or duplicate receipt while any former receipt for the same produce or other personal property, or any part thereof, shall remain outstanding or uncancelled, without writing or stamping plainly across the face of the same the word "duplicate." *Id.* sec. 3603.

Shall hold produce or proceeds subject to receipt:—No warehouseman shall sell or encumber, ship, transfer, or in any way remove, or permit to be removed, transferred, or shipped,

beyond his control, anything hereinbefore mentioned, for which a receipt shall have been given by him, until the receipt for the same be surrendered to and cancelled by him. *Id.* sec. 3604.

Warehouse receipts made negotiable:—All receipts issued by any warehouseman for cotton, tobacco, grain, hemp, whisky, or any kind of produce, wares, merchandise, or any description of personal property, shall be negotiable by written indorsements thereon, and delivery in the same manner and to the same intent (extent) as bills of exchange and promissory notes; and any person or persons to whom the same may be transferred bona fide, and for value received, shall be deemed and taken to be absolute owner of the produce, wares, merchandise, or other personal property therein specified; and no clause, condition, or limitation, either written or printed, in said receipt, shall be held to limit their negotiability or to affect the right of the holder or holders thereof. *Id.* sec. 3605.

Nonnegotiable receipts:—But all such receipts which shall have the words "not negotiable" plainly written or stamped thereon shall not be subject to the provisions of this chapter. *Id.* sec. 3606.

Hypothecations exceeding actual advances forbidden:—No warehouseman shall pledge, hypothecate, or negotiate any loan upon any receipt for produce, merchandise, or other personal property to a greater amount than he has actually paid or advanced thereon. *Id.* sec. 3607.

Punishments and penalties:—Any warehouseman who shall violate any of the provisions of this chapter shall be deemed guilty of a criminal offense, and, upon indictment and conviction thereof, shall be fined in any sum not exceeding five thousand dollars, or shall be punished by imprisonment in the penitentiary of the state for not more than five years, or both, in the discretion of the jury trying the case; and every and all person or persons aggrieved by the violation aforesaid shall have the right to maintain an action at law against the person or persons, corporation or corporations, violating any of the provisions of this chapter, to recover damages which he or they may have sustained by reason of such violation as aforesaid, before any court of competent jurisdiction, whether such person

or persons aforesaid shall have been convicted of a criminal offense under this chapter or not. *Id.* sec. 3608.

OF THE INSPECTION OF TOBACCO.

Warehouses:—Any citizen may open a warehouse for the inspection and sale of tobacco under the rules, regulations and restrictions of this article. *Id.* Sec. 3379.

Proof of sufficiency of warehouse required:—Every person so doing shall prove to the clerk, by the testimony of two impartial witnesses known to him to be well qualified, from knowledge and experience, as judges in the matter, that he is the proprietor of a good and sufficient warehouse, situated so as to be exposed to no extraordinary risk from fire or flood, and furnished, besides, with all the implements necessary to the accurate weighing and inspection of tobacco. *Id.* Sec. 3380.

Bond of tobacco warehouseman:—He shall also enter into bond, with good and sufficient security, to be approved by the judge or chairman of the county court, and payable to the state, in the sum of five thousand dollars, conditioned to keep his warehouse in good condition and repair so as effectually to protect the tobacco stored therein; that he will not sell any tobacco that has been bought by him or on his account, or purchase on his own account any tobacco stored in his warehouse, either directly or indirectly: and that he will perform faithfully all the duties of warehouse keeper as prescribed by law. *Id.* Sec. 3381.

Failing to give bond, not to collect fees; penalty:—Should said proprietor fail to execute said bond for five thousand dollars, then he shall not be entitled to collect any fees on tobacco stored in his warehouse, under a penalty of one hundred dollars for each offense, to be recovered in the name of the state, one-half to go to the informer. *Id.* Sec. 3382.

Who may sue, bond:—Any planter or person aggrieved may sue on this bond for a breach thereof, in the name of the state, until the penalty is exhausted. *Id.* Sec. 3383.

Warehouse to be kept in repair, or forfeiture; and liability on bond:—The proprietor shall fit up his house with plank floors or skids, upon which to place the tobacco, so that the hogsheads may be at least four inches from the earth; and any proprietor who fails to keep his warehouse in good repair, or to furnish it

as in this section provided, shall forfeit two hundred dollars to the state, and is also liable upon his bond to an action for damages, at the instance of any planter or owner whose tobacco is injured. *Id.* Sec. 3384.

Scales, and inspection of same:—The proprietor will keep good and sufficient scales for weighing tobacco, which shall be tested at the beginning of each tobacco year, and every three months thereafter, by the keeper and sealer of weights for the county, and at any time when written aplication is made by two or more planters or burghers. *Id.* Sec. 3385.

Breaking irons:—He shall also keep the necessary breaking irons for the proper inspection of tobacco, and screws for the proper cooperage and return of loose tobacco to the hogshead after inspection. *Id.* Sec. 3386.

Attention to duty:—He or his clerks shall be constant and prompt in their attendance at the warehouse for the reception and storage of tobacco, and to promptly deliver same to the planter or burgher entitled thereto, upon order, for shipment. *Id.* Sec. 3387.

Who may be inspector, deputy; oath:—The proprietor of a warehouse, regularly licensed (authorized (?), 1877, ch. 109) under this article, shall be, and is hereby, created an inspector of tobacco, with power to appoint deputy inspectors; but before any warehouse keeper who may personally act as inspector, or any deputy who may act as inspector for such warehouse keeper, shall enter upon the duties of an inspector, he shall go before the county court clerk, and take and subscribe the following oath: "I, A. B., do solemnly swear (or affirm) that I will carefully and diligently perform all the duties of an inspector of tobacco, according to law and to the best of my skill and judgment, without fear, favor, affection, malice, or partiality, and that I will not buy nor sell any tobacco inspected and sampled by me, nor accept any interest or profit in or from the purchase or sale of any tobacco inspected and sampled by me. So help me God." And shall enter into bond, with good and sufficient security, to be approved by the judge or chairman of the county court, and payable to the state, in the sum of five thousand dollars, conditioned to faithfully and honestly discharge the duties of his office; and that he will not buy nor sell any tobacco inspected and sampled by him, nor accept any interest or profit

in or from the purchase or sale of any tobacco inspected or sampled by him. *Id.* Sec. 3388.

Duties of proprietor or deputy:—It is the duty of the proprietor or one of his regular deputies:

(1) *To examine and classify.*—To inspect the uncasing and breaking of any tobacco for inspection, and to examine and classify same according to law and his oath of office.

(2) *To break hogsheads, how:*—To break each hogshead for inspection in at least four different places, drawing from each break at least four bundles or hands of tobacco, from different courses or layers, so as to get a fair and just representation of the quality and condition of the tobacco.

(3) *Sealing and marking samples.*—To place these bundles together in one sample, to stamp with the following seal, "State Tobacco Inspection," and mark with ink upon the label of the sample the name of the warehouse, the planter's name, the warehouse number of the hogshead and its approximate gross weight, the date of inspection, and the name of the sampler drawing the sample.

(4) *"Admitted"; "Refused."*—He shall mark "A," or "Admitted," all sound, clear, well-assorted leaf tobacco, clear (of) lugs or trash, in good keeping order; and shall mark "R," or "Refused," all lugs or trash, or leaf mixed with lugs or trash, or clean leaf tobacco, if not in good keeping order.

(5) *"Cask condemned."*—To condemn all hogsheads or casks that are insecure, or made of green or unsound timber, and mark upon the label of the sample, "Cask Condemned"; the cost of putting such hogshead in proper merchantable order shall be charged to the owner of the tobacco.

(6) *"Damaged."*—He shall refuse to classify, and shall mark as "Damaged," expressing on the label the probable amount of damage, every hogshead so damaged that the sample drawn will not show the character and extent of damage.

(7) *Hogsheads fraudulently packed, "condemned," etc.*—He shall refuse to classify, and mark "Condemned," any hogshead of tobacco that is falsely and fraudulently packed with intent to deceive, and shall give full information to the grand jury about such hogshead, from his books, when called upon to furnish same.

(8) *Coopering, reweighing, and marking.*—To superintend the coopering and reweighing; to see that each cask is replaced over the same tobacco from which it was taken; to mark the hogshead on both heads with distinct figures, specifying the correct weights.

(9) *Register of inspection.*—To carefully enter in a book, to be provided and kept for that purpose alone, an account of every hogshead of tobacco inspected, stating the planter's name, warehouse number, the gross weight, the tare, the net weight, the price at which it is sold, the purchaser's name, and its quality, whether "admitted" or "refused."

(10) *Inspection to be personally made.*—The inspector of tobacco shall be personally present, and witness the breaking of any tobacco for inspection, and personally attach his seal to the sample drawn, and to pay all just reclamations on tobacco improperly sampled by him.

(11) *Reinspection, when made.*—Should any planter, or his agent representing him, claim that the sample drawn from his tobacco by an inspector does not represent fairly the hogshead from which it was taken, he may demand that such hogshead be reinspected, and the tobacco board of trade shall appoint a committee, consisting of two warehousemen and one buyer, who shall resample said tobacco, so as to show, as nearly as may be, the average condition and quality of the hogshead; and upon said sample so drawn by said committee, and the said sample drawn by the inspector, the said board of trade shall proceed to adjudge, in the same manner and in all respects as reclamations in favor of the buyer are determined, the amount, if anything, said hogshead has been undersampled by the said inspector, and the amount so adjudged shall be paid by said inspector to said planter. But nothing herein contained shall be so construed as to prevent any planter from guaranteeing his tobacco to come up to the sample drawn by any inspector. *Id.* Sec. 3389.

Responsibilty of keeper:—After the tobacco is inspected, coopered, weighed, and numbered, the warehouse keeper becomes responsible to the planter or owner for the weights and proper keeping of the tobacco. *Id.* Sec. 3390.

Conversion of samples, or plucking leaves from, prohibited; penalty:—No warehouse keeper, nor anyone in his employ-

ment, shall take or convert to his own use, or dispose of, any sample of tobacco, but the same shall be delivered to the purchaser, and all loose tobacco shall be neatly returned to the hogshead from which it came, before coopering and weighing. No person shall willfully or wantonly pluck any leaf or leaves from any sample of tobacco to which the inspector has attached his seal, either before or after sale. Any person violating this section shall forfeit fifty dollars for each offense, one-half to state, the other to the informer. *Id.* Sec. 3390a.

Erasure or counterfeiting, misdemeanor:—If any person erase, or in any way alter or deface, any letter, mark, number, or figure put upon any hogshead by an inspector, or counterfeit the same, previous to the delivery to the purchaser, he is guilty of a misdemeanor. *Id.* Sec. 3391.

Keeper not to sell tobacco until inspection; penalty:—No warehouse keeper shall sell publicly any sample of tobacco which has not been regularly inspected under the provisions of this article, under a penalty of five dollars for each hogshead so sold, to be recovered by any person suing therefor. *Id.* Sec. 3392.

Copy of sample cards; "inspected:"—When any warehousekeeper is called upon to inspect a lot of tobacco, he shall make a copy of the original sample card, and write on it, in plain letters, "Inspected," adding the date. *Id.* Sec. 3393.

Warehouseman not to sell or buy:—The proprietor of no warehouse shall sell any tobacco that has been directly or indirectly bought by him, or on his account, nor directly or indirectly purchase on his own account any tobacco stored in his warehouse. But this section is not to be construed as referring to the sale of crops of tobacco raised by the proprietor or any of his agents or employees. The proprietor of no warehouse, nor any deputy of such proprietor, who shall act as inspector of tobacco, shall buy nor sell any tobacco inspected and sampled by him, nor accept any interest or profit in or from the purchase or sale of any tobacco inspected and sampled by him. Any person violating this section shall forfeit fifty dollars for each hogshead so purchased or sold, or in which such interest or profit was accepted, one-half to the state, the other to the informer. *Id.* sec. 3394.

Accepting gratuity or reward; penalty:—If any warehouse keeper accepts, directly or indirectly, any gratuity or reward for anything by him done in the discharge of his official duties, he shall forfeit two hundred dollars to the state, and be, moreover, guilty of a misdemeanor, and punishable by fine. He shall also forfeit his office and be forever after disqualified from holding the office of "tobacco inspector." *Id.* sec. 3395.

Derelictions to be reported to county court clerk:—Any planter or person shall inform the clerk of the county court of any dereliction of duty on the part of the warehouse keeper. *Id.* sec. 3396.

Fraudulent packing or "nesting;" penalty:—Any person who fraudulently packs or "nests" a hogshead of tobacco with intent to deceive, and obtain thereby more than its true value, is guilty of a misdemeanor, and shall be fined not less than fifty dollars nor more than five hundred dollars, and be imprisoned not more than six months. *Id.* sec. 3397.

Description, etc., of best hogshead to be posted in warehouse:—The warehouse keeper shall keep posted up in some conspicuous place in his warehouse a description of the hogsheads or casks, length, measurement, etc., best suited to contain tobacco for market. *Id.* sec. 3398.

Fees, commissions, etc:—The compensation of warehouse keepers for receiving, storing, inspecting, coopering, and selling tobacco shall be as follows, to wit: To be paid by the seller, $2.50 and one per cent. commission on proceeds of sale; to be paid by buyer, $1.50, and for storage after sale, after the first thirty days, for each month or part thereof, twenty-five cents. *Id.* sec. 3399.

Penalty for extortion:—Any warehouse keeper who shall charge more than is allowed in the preceding section is guilty of a misdemeanor, and is also liable to a penalty of ten dollars to the planter or person overcharged, recoverable before any justice of the peace. *Id.* sec. 3400.

Refusing bid:—Any planter or other owner of tobacco sold at auction, may, by paying the fees, refuse at the time to take the price at which it was cried off. *Id.* sec. 3401.

Proprietor's lien:—A lien is hereby given to the proprietor of the warehouse on all tobacco and proceeds for fees and charges on same. *Id.* sec. 3402.

Selling or shipping without inspection not prohibited:—No planter or person is prohibited from selling his tobacco at private sale, with or without inspection, if he chooses so to do, nor compelled to have his tobacco, though stored in a licensed warehouse, inspected; but he may sell or ship it without inspection. *Id.* sec. 3403.

Prosecution for penalties; duties of county court clerk and district attorney; their fees:—The clerk of the county court shall attend to all prosecutions for penalties under the provisions of this article, for the use of the state, for which he shall receive ten per cent on the sums collected and paid into the state treasury. He may also, when necessary, call on the district attorney to give professional attention to such prosecutions, for which service said attorney shall be allowed ten dollars, to be taxed in the bill of costs. *Id.* sec. 3404.

Judges to give this article in charge:—The judges of the several circuit courts of this state shall be, and they are hereby, required, at all the courts which they hold in the counties where a tobacco inspection is established, to give this article in charge to the grand jury and direct said jury to make diligent inquiry in regard to any breaches hereof, and particularly in regard to the conduct of inspectors. *Id.* sec. 3405.

"Tobacco commercial year."—The "tobacco commercial year" commences and ends on the first day of November of each year. *Id.* sec. 3406.

Private warehouses:—Nothing in this article contained shall prevent any person from establishing a private warehouse for the storage of tobacco. *Id.* sec. 3407.

DECISIONS AFFECTING WAREHOUSEMEN

A.

Bailment—Demand necessary:—In an ordinary case of bailment no action would lie for the conversion of the deposit until there has been a demand and a refusal, but where a debt is

created by the transaction, payable on demand, the institution of the suit is a sufficient demand. See sec. 1947, Code; *Moore* v. *Fitzpatrick*, 7 Bax. 350; *Bryant* v. *Puckett*, 3 Hay, 252.

Same—Parting with property:—Bailees generally cannot part with possession of property without the consent of the owner, and the delivery of property without such consent should be treated as a conversion. *Colyar, Trustee, etc.*, v. *Taylor*, 1 Cold. 372; *Mariner* v. *Smith*, 5 Heisk. 203.

Same—Liability of bailee may be affected by usage:—If a usage of trade qualified the bailee's liability, testimony will be received to prove such usage. *Kelton* v. *Taylor & Co.*, 11 Lea, 264.

B.

Ordinary care—General rule:—Ordinary care defined to be that care and diligence which good and capable warehousemen are accustomed to show under similar circumstances or that which business men, experienced and faithful in their particular department, are accustomed to exercise when in the discharge of their duties. The warehouse must be a suitable building but it need not be fireproof, and the building must be watched in a manner proportional to the risk which the warehouseman assumes. *Lancaster Mills* v. *Merchants' Cotton-Press Co. et al.*, 89 Tenn. 1; *Waller* v. *Parker*, 5 Cold. 466; *Deming & Co.* v. *Merchants' Cotton-Press, etc., Co.*, 90 Tenn. 306; *Kelton* v. *Taylor & Co.*, 11 Lea, 264; *Kirtland* v. *Montgomery*, 1 Swan, 452; *Polk* v. *Kirtland et al.*, 9 Heisk. 292; *Wallace* v. *Canady*, 4 Sneed, 364; *Swift & Co.* v. *Memphis Cold Storage Warehouse Co.*, 158 S. W. 480.

Same—How contract between warehouseman and depositor ascertained:—The proper manner of ascertaining the contract existing between the depositor and a warehouseman is not alone from an examination of dray tickets, but the relations of the two must be considered as well as former transactions, and the custom existing between the parties. *Lancaster Mills* v. *Merchants' Cotton-Press Co. et al.*, 89 Tenn. 1.

Title—Parol reservations as to—When valid:—A warehouseman advancing money to a customer to purchase produce to be shipped to him and sold on the customer's account, may validly stipulate by *parol* that the title to the property thus purchased

shall vest and remain in him as security for the money advanced, although its possession passes temporarily to the customer for preparation and shipment; and upon the title thus reserved the warehouseman can maintain replevin against the customer, his administrators or creditors for such property thus purchased, as can be identified. *Grange Warehouse Assoc.* v. *Owen*, 86 Tenn. 355.

Attachment of goods while bailed—Owner cannot maintain trover:—Where property was attached while in the hands of the bailee the owner thereof cannot maintain trover against the officer having possession of the property under such attachment for the reason that the plaintiff in trover must establish his right of possession as well as his right of property, and that right must exist at the time of the conversion. *Caldwell* v. *Cowan*, 9 Yer. 261.

E.

Factors—May pledge goods to secure their interest—When they may refuse to comply with order to sell:—Factors who have made advances upon goods intrusted with them may pledge the same to the extent of their interest therein. If such a factor be instructed by the owner to sell the goods he may refuse to do so if the goods would not sell for a sufficient amount to reimburse him for his advances. *Blair & Jefferson* v. *Childs*, 10 Heisk. 199.

H.

Storage charges—When not recoverable:—Storage charges cannot be recovered when the holding of depositor does not inure to the benefit of the true owner. *Hamilton & Co.* v. *Kennedy et al.*, 62 Tenn. 476.

I.

Warehouse—Leased portion of manufacturing plant may constitute:—Regarding such heavy and bulky material as iron and similar products, it would be unreasonable to require that it be stored in any particular kind of building or warehouse, such as would be necessary for grain or meat. Leased premises, sufficiently marked off, by placards, stakes, or otherwise, to indicate possession, is valid, in law, as a warehouse lot or storage place, and that such a place is suitable and appropriate to heavy and

bulky material. *Bush* v. *Export Storage Co.*, 136 Fed. Rep. 918, 933.

L.

Replevin—Demand not necessary:—In order to maintain an action of replevin, it is not necessary to show a demand on the part of the plaintiff, for the property in controversy, before bringing his suit. *Draper* v. *Moseley et al.*, 3 Bax. 201.

Detinue—Demand necessary:—A defendant to whom property has been bailed by the apparent owner cannot be sued in an action of detinue for the property by the true owner, unless a demand for the property had been made previous to the institution of the suit. *Hunter* v. *Servier*, 7 Yer. 127.

N.

Loss by fire—Warehouseman not liable unless the fire results from his negligence—Burden of proof:—A warehouse and contents were completely destroyed by fire. In an action against the warehouseman the jury found that he had exercised ordinary care in all respects save that he had failed to keep closed a part of one side of his warehouse below the floor; further, the jury was unable to find that the destruction of the warehouse resulted from this defect or was in any way connected therewith, and, in fact, was unable to ascertain the cause of the fire. It was held that under the above stated facts the warehouseman was not liable, the court holding that the burden of proof was upon the complainant to show that the fire was a result of the defendant's negligence. It must show that the negligence of the defendant was the proximate cause of the loss. *Lancaster Mills* v. *Merchants' Cotton-Press Co. et al.*, 89 Tenn. 1; *Ry. Co.* v. *Manchester Mills*, 88 Tenn. 653.

Same—When statement of warehouseman that goods are not in his possession amounts to negligence—Proximate cause:—A carrier which had received goods and had stored them in its depot informed the consignee on several occasions when he called for the goods that they had not been received. The goods were destroyed by fire which consumed the depot and its contents. *Held* that the carrier was liable as a warehouseman; that the failure of the carrier's servants to deliver the goods when they were actually in store, and his ignorance in not knowing of their receipt, constituted negligence, and that this mistake on the part

of the carrier's servants was the proximate cause of the loss. *Railroad* v. *Kelly*, 91 Tenn. 699; *Butler* v. *Railroad*, 8 Lea, 32; *Kremer* v. *Express Co.*, 6 Cold. 360.

Loss by act of war—When bailee not liable—Instructions to jury:—A bailee of goods is not liable for their loss if he can show that the goods were taken out of his possession or from under his control by irresistible military authority. Therefore, a charge to the jury in a suit against a warehouseman for the value of goods intrusted to his care, to the effect that if they were satisfied from the evidence that the goods were burned, *or directed to be burned,* by the military authority of the Confederate States against his consent that they were to find for the defendant, was erroneous. Although such charge was not excepted to at the trial the appellate court sent the case back for a new trial on the ground that this instruction constituted an actual error which tended to mislead the jury on a material question in the case. *Weakley* v. *Pearce et al.*, 5 Heisk. 401.

P.

Contracts to keep insured—When they do not constitute the warehouseman an insurer:—A cotton-press company had a contract with a common carrier that it would insure in solvent companies all cotton which it received from the carrier. Under such an arrangement it was *held* that in view of the fact that the goods, which were only partly insured and subsequently destroyed by fire, did not belong to the carrier, that it was a mere voluntary imposition of an obligation of insurance incidentally beneficial to the owners of the cotton, and that it was not in law or reason the same thing as the assumption of an obligation of insurance. In this case the loss occurred without negligence. It was further *held* that although the failure of the cotton-press company to carry such insurance might result in incidental damage to the owners of the cotton, the carrier would not be liable for its loss unless it could be shown that the carrier was under some obligation to the owners to insure or that the cotton-press company should insure. There was no privity between the carrier and the owners with respect to insurance. The contract bound the cotton-press company *itself;* it was to insure the cotton and not merely the carrier's responsibility therefor; thus such insurance would incidentally inure to the benefit of the owners but

this afforded no reason whatever for holding the carrier liable to the owners for the failure of the cotton-press company to fully carry out its obligation with the carrier in respect of insurance. *Lancaster Mills* v. *Merchants' Cotton-Press Co. et al.*, 89 Tenn. 1.

Same—Some—Liability for breach of contract—Recovery by owner from other policies a bar:—A warehouseman contracted with a carrier that the goods stored with him would be fully covered by insurance for the benefit of the latter. After loss it appeared that the owners had previously insured the property in their own names and had collected the amount of such policies, the receipt therefor being given as for money "borrowed and received." It was *held* that this contract did not constitute the warehouseman an insurer of the goods but that the owners might recover from him such amount as they could prove they lost as a result of the failure of the defendant to comply with the terms of his contract. If the defendant could show that the complainant had received the full value of the goods destroyed under its policy of insurance he could not recover against the warehouseman for he had not been damnified by the defendant's breach of contract. *Lancaster Mills* v. *Merchants' Cotton-Press Co. et al.*, 89 Tenn. 1; *Deming & Co.* v. *Merchants' Cotton-Press etc., Co.*, 90 Tenn. 306.

Q.

Warehouse receipt—What is not:—A receipt signed jointly by the proprietor of a bonded warehouse and the government storekeeper, and issued to the purchaser of whiskey on storage in the warehouse and providing for delivery of the same upon the return and surrender of the receipt, properly indorsed, and payment of government tax and storage changes, is not a technical warehouse receipt within the meaning of the statute on that subject and does not possess the attributes conferred by the statute, although it recites that it "is given in deference to the Tennessee warehouse laws." *Marks & Co.* v. *Bridges & Son*, 106 Tenn. 540.

Same—Failure of warehouseman to pay state tax:—Failure of warehouse company to pay state tax does not invalidate its warehouse receipts. *Love* v. *Export Storage Co.*, 143 Fed. Rep. 1, 19.

Same—Innocent holder of bonded warehouse receipt:—The holder of a government bonded warehouse receipt, except he be an innocent holder for value, cannot maintain an action against

the proprietor of the bonded warehouse for conversion of the whiskey therein described where the latter has, by appropriate legal proceedings, subjected it to public sale for the purchase price and become the purchase thereof at such sale. *Id.*

Same—A contract—Estoppel:—As between the makers of a warehouse receipt and an assignee thereof in good faith it is not simply a receipt subject to be explained and contradicted by parol, but it is a contract subject to the rules applicable to other contracts. In an action on a warehouse receipt a warehouseman will be estopped to show by parol that he did not actually receive the goods. *Stewart, Gwynne & Co.* v. *Phœnix Ins. Co.,* 9 Lea, 104.

Same—Provisions in that property placed in cold storage is at owner's risk and condition unknown to warehouseman—Liability of warehouseman:—Where defendant warehouseman issued receipts for eggs placed in cold storage in which it was stated that the storage was at the "owner's risk" and that the condition of the eggs when placed on storage was unknown to the warehouseman, it was held the warehouseman was required ot exercise only ordinary care, or "the care and diligence which good and capable warehousemen, experienced and faithful in the particular department are accustomed to exercise when in the discharge of their duties." *Swift & Co.* v. *Memphis Cold Storage Warehouse Co.,* 158 S. W. 480.

Same—Negotiability—Bona fide owner protected:—A *bona fide* owner of warehouse receipts even though the description of the goods is somewhat vague takes title to the property thereby as against an attaching creditor who seizes the goods while stored. *Bank of Rome* v. *Haselton,* 15 Lea, 216.

Same—As collateral—Facts held sufficient to constitute change of possession:—Defendant warehouse company had no warehouse of its own and its business was confined to warehousing on the premises of those who desired to warehouse their goods. A hardwood company contracted with defendant to warehouse its lumber and an inventory was made of the lumber. Signs of defendant, bearing the description of the lumber and number of warehouse receipt were tacked at the ends of the several piles of lumber and a custodian placed in charge. Warehouse receipts were issued and pledged as collateral security for a

note of the hardwood company, the proceeds of which went to the credit of the company. *Held* to be a sufficient change of possession. *Love* v. *Export Storage Co.,* 143 Fed. Rep. 1.

Same—Same—Goods marked by placards:—Property set aside and boundaries marked by placards, stakes, etc., held to constitute delivery to warehouse company, and delivery of warehouse receipts issued therefore held to be valid, and a pledging of these receipts to bona fide holder held to give pledgee such special property in the property or property substituted therefor as will entitle him to possession. *Bush* v. *Export Storage Co.,* 136 Fed. Rep. 918.

Same—Same—Bank must show itself to be innocent holder:—Replevin for certain goods which had been ordered by S-W. Co. in January and were delivered at a warehouse in March. On afternoon of day of arrival, near or after banking hours, the warehouse receipt was delivered to appellee bank, as security for $9,100 note; whether as additional, or part additional security and part new loan, was uncertain. No evidence that any of the money was drawn from the bank or was paid any other person. The next day S-W. Co. failed. *Held:* that there was enough evidence in the case as to the fraudulent intent of S-W. Co. to make it incumbent on the bank to offer evidence to sustain its defense of being an innocent holder, and no testimony was offered. If there was evidence from which the jury might infer fraud on the part of the S-W. Co., the burden of proof then shifted to the bank to show that it was a *bona fide* purchaser, whether the transaction be considered from the standpoint of the bill of lading or the warehouse receipt. Judgment for plaintiff for possession of goods affirmed. *Bank* v. *Chatfield,* 118 Tenn. 481.

Same—Issued by bookkeeper without authority—Warehouseman not liable—When:—Defendants erected a warehouse on the right of way of a railroad company pursuant to a recorded contract with the company by which defendants were to store property of shippers and to receive compensation therefor from the company. Defendants issued no warehouse receipts for property stored with them but simply memoranda, when requested, showing the kind of property and the weight or amount there-

of. Defendants made arrangements with one of the large shippers that they would pay half of the salary of a bookkeeper of such shipper who would keep a record of all freight weighed in and out of the warehouse. This practice was followed for a year or more when the bookkeeper under an understanding with such shipper, issued to him, without defendants' knowledge, warehouse receipts which were used as collateral security for loans. The first note was renewed at maturity, the bank still retaining the receipt. The defendants first learned of these transactions when the bank filed its bill of attachment against them. The evidence showed that no particular products belonging to the shipper were ever set aside as against the warehouse receipts wrongfully issued and that the bank knew, or was affected with knowledge that the shipper was continually selling and shipping such products as were mentioned in the receipt. It was *held* that if the instructions to the bookkeeper not to issue warehouse receipts were merely private instructions they would not be binding upon the public or any party taking the warehouse receipts in ignorance of such instructions but in view of the nature of the business which defendants were conducting, under their contract with the railroad company which contract was of public record, and the knowledge of the bank as to the nature of defendants' and the shipper's business, that defendants were not warehousemen and were not liable on such warehouse receipts. *Cleveland National Bank* v. *Bryant, et al*, 54 S. W. 73.

Failure to deliver—Warehouseman estopped to deny receipt of goods:—A warehouseman accepting from the owner of goods a receipt or delivery order for them issued to him a warehouse receipt therefor. The warehouseman never obtained possession of the goods and never advised the owner of this fact. After the lapse of two years, during which time the warehouseman collected storage charges from the owner, he will not be permitted to defend, in an action brought against him by the owner, that he never had possession of the goods. *Nowell* v. *Seattle Transfer Co.*, 116 P. 287.

R.

Bill of lading—Exemptions:—A stipulation in the bill of lading that the carrier shall not be liable for destruction of the goods by fire while the goods are in its depot, station, yard, landing or warehouse, is valid, provided there is sufficient consideration

therefor, and further provided, that it is in no sense a stipulation against the liability of the carrier for its negligent acts. *Lancaster Mills* v. *Merchants' Cotton-Press Co. et al*, 89 Tenn., 1; *Railroad Co.* v. *Craig*, 102 Tenn. 298.

Same—Same—Negligence—Effect of acceptance:—A common carrier may by general stipulations, based on sufficient consideration, limit his liabilities, except such as grow out of his negligence or bad faith, and such limitations may be embodied in the bill of lading which represents the goods. There is a natural presumption when one accepts a bill of lading that he is acquainted with the contents thereof. *Dillard Bros.* v. *L. & N. R. R. Co.*, 2 Lea, 288; *E. T., Va. & Ga. R. R. Co.* v. *Brumley*, 5 Lea, 401; *Merchants' Dispatch Transportation Co.* v. *Bloch Bros.*, 2 Pickle, 392.

Same—Same—To be strictly construed:—Exemptions contained in a bill of lading are limitations upon the common-law liability of the carrier and are not favored by the courts. They are to be strictly construed and limited to the general risk of the carrier after it obtains the custody of the property, unless the terms thereof expressly extend to a special risk. *Deming & Co.* v. *Merchants' Cotton-Press, etc., Co.*, 90 Tenn. 306.

Same—Same—As to measure of damage—Conversion:—The ordinary measure of damages, to wit, the market value of goods at place of destination, less freights, applies to a case where carrier has been guilty of conversion, although bill of lading contains stipulation that the carrier, in case of loss, shall be liable only for the value of the goods at time and place of shipment. *Erie Dispatch* v. *Johnson & Guince*, 87 Tenn. 490.

Same—Effect of transfer:—A transfer and delivery of a bill of lading vests the property in the transferee, this being regarded in law as a constructive delivery of the property itself. *Ochs et al., Burger & Seibel* v. *Price et al.*, 6 Heisk. 483.

Same—Same—Possession of bill of lading before delivery—Attachment:—Factors received a bill of lading for cotton which was shipped to them by the owner. When the cotton was on the wharf but before the factor had taken possession thereof it was attached by a creditor of the owner. It was *held* that the title of the cotton was still in the consignor and that the possession of the bill of lading in this case was not a possession of the cotton

itself. It only gave authority to the factor to reduce the cotton to possession. *Saunders* v. *Bartlett, Gould & Heath,* 12 Heisk, 316; *Oliver et al.* v. *Moore & Co.,* 12 Heisk, 482; *Woodruff* v. *N. & C. R. R. Co.,* 2 Head, 87.

U.

Warehouse act constitutional—Does not embody more than one subject:—The act of 1879 known as the Warehouse Act does not violate sec. 17, art. 2 of the constitution of the state of Tennessee in that it embodies more than one subject. Its title is "An act to define warehousemen, to regulate their duties, and to affix penalties for the violation thereof, and relating to their receipts." This act embodies but one subject and that is plainly expressed in its title. *Bank of Rome* v. *Haselton,* 15 Lea, 216; *Monell* v. *Fickle,* 3 Lea, 79.

CHAPTER XLIII

TEXAS.

LAWS PERTAINING TO WAREHOUSEMEN.

Be it enacted by the Legislature of the State of Texas:

That Articles 969, 970, 971, 972, 973, 974, 975, 976, 977 of Chapter 5, Title 14, of the Penal Code of the Revised Criminal Statutes of Texas for 1911, and Articles 7819, 7820, 7821, 7822, 7823, 7824, 7825, 7826, 7827 of the Revised Civil Statutes of Texas of 1911, be and the same are hereby so amended as to hereafter read as follows: An Act relating to public warehouses, amending Articles 969 to 977 inclusive, Chapter 5, Title 14, Penal Code, relating thereto. Took effect Nov. 18, 1913. General Laws Texas 1913, Ch. 37, p. 93, sec. 1.

All persons, firms, companies or corporations who shall receive cotton, tobacco, wheat, rye, oats, rice, oil or any kind of produce, wares, merchandise, or any description or personal property in store for hire, under the provisions of this Act, shall be deemed and taken to be public warehousemen; and all warehouses which shall be owned or controlled, conducted and managed in accordance with the provisions of this Act, shall be deemed and taken to be public warehouses, provided that a public warehouse for the storage of cotton may, within the meaning of this Act, include a lot or parcel of land inclosed with a lawful fence, the gates or entrances to which shall be kept securely locked at night. *Id.* sec. 2.

The owner, proprietor, lessee or manager of any public warehouse, whether an individual, firm or corporation, before transacting any business in such public warehouse shall procure from the county clerk of the county in which the warehouse or warehouses are situated, a certificate that he is transacting business as a public warehouseman under the laws of the State of Texas, which certificate shall be issued by said clerk upon a written application, setting forth the location and name of such warehouse or warehouses, and the name of each person, individual,

or a member of the firm, interested as owner or principal in the management of the same, or, if the warehouse is owned or managed by a corporation, the names of the president, secretary and treasurer of such corporation shall be stated, which application shall be received and filed by such clerk and preserved in his office, and the said certificate shall give authority to carry on and conduct the business of a public warehouse within the meaning of this Act, and shall be revokable only by the district court of the county in which the warehouse or warehouses are situated, upon a proceeding before the court, on complaint by written petition of any person, setting forth the particular violation of the law, and upon process, procedure and proof, as in other civil cases. The person receiving a certificate, as herein provided for, shall file with the county clerk granting same, a bond payable to the State of Texas, with good and sufficient surety, to be approved by said clerk, in the penal sum of five thousand dollars, conditioned for the faithful performance of his duty as a public warehouseman,—which said bond shall be filed and preserved in the office of such clerk. *Id.* sec. 3.

On application of the owner or depositor of the property stored in a public warehouse, the warehouseman shall issue, over his own signature, or that of his duly authorized agent, a public warehouse receipt therefor, to the order of the person entiled thereto; which receipt shall purport to be issued by a public warehouse, shall bear date of the day of its issue, and shall state upon its face the name of the warehouse and its location, the description, quantity, number and marks of the property stored, where such receipt is for cotton it shall state the class and weight, and the date on which it was originally received in warehouse, and that it is deliverable upon the return of the receipt, properly indorsed by the person to whose order it was issued, and on payment of all charges for storage, and insurance, which charges shall be stated on the face of the receipt. All such receipts shall be numbered consecutively, in the order of their issue; and when such receipt is for cotton, the receipt shall state whether the cotton therein described is exposed to the weather or is under shelter; and a correct record of such receipts shall be kept in a well bound book, which shall be, at all reasonable hours, open to examination by any interested person; and no two receipts bearing the same number shall be issued from the same warehouse during

the same year, nor shall any duplicate receipts be issued, except in the case of a lost or destroyed receipt, in which case the new receipt shall bear the same date and number as the original, and shall be plainly marked on its face, "duplicate" and provided, that no such duplicate receipt shall be issued by the public warehouseman until adequate security acceptable to the warehouseman be deposited with or to the order of said warehouseman, to protect the party or parties who may finally hold the original receipt in good faith and for a valuable consideration. *Id.* sec. 4.

The supervision of public warehouses shall be under the control of the Commissioner of Insurance and Banking, whose duty it shall be to prescribe all forms of receipts, certificates, and records of whatsoever description necessary in the conduct of the business of public warehouses; and in providing forms for handling those products which are of general commercial character, the said commissioner shall prescribe forms answering to all usual requirements of negotiable receipts or certificates. The Commissioner of Insurance and Banking is hereby empowered and directed to make not less than one examination each year of all such public warehouses, the necessary expense of such examination or examinations to be paid by the warehouse. *Id.* sec. 5.

The Commissioner of Insurance and Banking shall provide a uniform public warehouse receipt for cotton which shall be used by all public warehouses coming under the provisions of this Act, which said receipt shall conform in all respects to the provisions herein set out. In addition to the other provisions such receipt shall have a blank form on the back thereof, to be filled in and signed by the owner of the cotton showing whether or not such cotton is free from encumbrance or liens of any kind. *Id.* sec. 6.

If there is any encumbrance or liens of any kind on said cotton at the time of its storage the nature and amount of same shall be clearly set out and it is hereby made the duty of the public warehouseman or his authorized agent issuing the receipt, to have said blank filled in and signed by the owner of the cotton before issuing a negotiable receipt against same; provided, however, such statement need not be made if a non-negotiable receipt is desired, but in such cases the public warehouseman issuing said receipt shall write or stamp across the face thereof the words "not negotiable." *Id.* sec. 7.

If a person holding a non-negotiable receipt for cotton as is herein provided for, shall desire to obtain a negotiable receipt in lieu thereof, he shall return said non-negotiable receipt to the public warehouse issuing same and thereupon shall comply in every respect with the provisions of this chapter relating to negotiable receipts, and upon compliance therewith a negotiable receipt shall be issued to him in lieu of said non-negotiable receipt, and said non-negotiable receipt thereupon shall be cancelled, and the word "cancelled" plainly marked in ink across the face thereof. *Id.* sec. 8.

Any person making a false statement concerning liens, mortgages, encumbrances or indebtedness or whatsoever nature against the cotton, or who shall in any particular conceal the existence of liens, mortgages, encumbrances or indebtedness of any kind that may exist against such cotton, or who shall fail to truthfully make the statements provided for by this Act, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine of one thousand dollars, or imprisonment in the penitentiary for one year, or by both such fine and imprisonment. *Id.* sec. 9.

No public warehouse receipt shall be issued except upon the actual previous delivery of the goods in the public warehouse or on the premises, and under the control of the public warehouseman by whom it purports to be issued; and the name of the warehouse shall invariably be specified in such receipt. *Id.* sec. 10.

On the presentation and return to the warehouseman of any public warehouse receipt issued by him and properly indorsed, and the tender of all proper warehouse charges upon the property represented by it, such property shall be delivered immediately to the holder of such receipt; but no public warehouseman who shall issue a receipt for goods shall, under any circumstances or upon any order or guarantee whatsoever, deliver the property for which receipts have been issued, until the said receipt shall have been surrendered and cancelled, except in case of lost receipts, as provided for in Section 4; and, in default of the strict compliance with the provisions of this article, he shall be held laible to the legal holder of the receipt for the full value of the property therein described, as it appeared on the day of the default, and shall, furthermore, be liable to the special penalty herein provided. Upon delivery of the goods from the warehouse, upon any receipt, such receipt shall be plainly marked in ink across its face with the words "cancelled," with

the name of the person cancelling the same, and shall thereafter be void, and shall not again be put in circulation. *Id.* sec. 11.

No public warehouseman shall insert in the public warehouse receipt issued by him any language limiting or modifying his liabilities or responsibilities as imposed by the laws of this State, excepting, "not accountable for leakage or depreciation," or words of like import and meaning. *Id.* sec. 12.

The receipt issued against property stored in public warehouses, as herein provided for shall be negotiable and transferable by endorsement in blank or by special endorsement, and delivery in the same manner and to the same extent as bills of exchange and promissory notes now are, without other formality; and the transferee or holder of such public warehouse receipt shall be considered and held as the actual and exclusive owner, to all intents and purposes, of the property therein described, subject only to the lien and privilege of the public warehouseman for storage and other warehouse charges; provided, however, that all such public warehouse receipts as shall have the words "not negotiable" plainly written or stamped on the face thereof, shall be exempt from the provisions of this article; and provided, further, that no public warehouseman shall issue warehouse receipts against his own property in his own warehouse; but, upon sale of such property in good faith may issue to the purchaser his public warehouse receipt in form and manner as herein provided, which issue and delivery of the receipt shall be deemed to complete the sale, and shall constitute the purchaser full owner, as aforesaid, of the property therein described. Nothing in this last clause shall be construed to exempt the issuer of said receipt for his own goods in his own public warehouse, from complying with and being subject in all respects, to all other articles of this chapter. *Id.* sec. 13.

Any public warehouseman who violates any of the provisions of this law shall be deemed guilty of criminal offense, and, upon indictment and conviction thereof, shall be punished by fine in any sum not exceeding five thousand dollars, or imprisonment in the State penitnetiary not exceeding two years, or by both such fine and imprisonment. *Id.* sec. 14.

Any, every and all persons, aggrieved by the violations aforesaid, shall have the right to maintain an action against the person or persons, corporation or corporations, so violating any of the provisions of this law, for the recovery of damages which he

or they may have sustained by reason of such violation aforesaid, before any court of competent jurisdiction, whether such person or persons so violatnig shall have been convicted of criminal offense under this law or not. *Id.* sec. 15.

Nothing in this law shall be construed ot apply to private warehouses or to the issue of receipts by their owners or managers under existing laws, or to prohibit public warehousemen from issuing such receipts as are now issued by private warehousemen under existing laws; provided, that such private warehouse receipts issued by public warehousemen shall never be written on a form or blank indicating that it is issued from a public warehouse, but shall, on the contrary, bear on its face, in large characters, the words, "not a public warehouse receipt." *Id.* sec. 16.

The fact that the existing law regarding the regulation of bonded warehouses is inadequate to meet the requirements of commerce and properly safeguard the handling of cotton and other products stored in such warehouses creates an emergency and imperative public necessity that the constitutional rule requiring bills to be read on three several days be suspended, and that this bill be placed on its third reading and final passage and take effect and be in force from and after its passage and it is so enacted. *Id.* sec. 17.

[NOTE.—This act, being H. B. No. 44 was passed by the House August 15, 1913, but no vote given; House concurred in Senate amendments August 19, 1913, but no vote given, and was passed by the Senate by a two-thirds vote, yeas 27, nays 0.]

DECISIONS AFFECTING WAREHOUSEMEN

A.

Bailment—Owner may sue bailee although not a party to the bailment:—It is settled in this state, that the owner of property held by a bailee may sue to recover it from him, though not a party to the contract of bailment. *Clay & Browne* v. *Gage & Wood,* 1 C. A. 661.

Same—Bailee taking with notice of claim—Subject thereto:—Where one buys property or receives it as bailee with notice of a claim of title by another, adverse to his vendor or bailor, he takes and holds subject to the rights of the adverse claimant, though ostensible title may have been in his vendor or bailor. *McAnelly* v. *Chapman,* 18 Tex. 198; *Luckett* v. *Townsend,* 3 Tex. 119.

Same—Same—Conversion:—Where a bailee has knowledge of a claim of title by another adverse to his bailor, and by direction of his bailor carries off the property, he becomes responsible to such adverse claimant for the value of the property if the latter proves to be the rightful owner, whether the suit by which such right is established is then or thereafter brought. *McAnelly* v. *Chapman,* 18 Tex. 198.

Same—Limiting liability:—Bailees may by contract limit their liability provided such limitation is not contrary to public policy. *Coffield* v. *Harris,* 2 App. Cas. sec. 316.

Same—Execution upon property in hands of factor:—Property which has been delivered to a factor for shipment, and upon which the factor has made advances, may nevertheless be taken in execution by a creditor of the owner, subject to the advances which have been made. *Joost* v. *Scott,* 19 Tex. 473.

Same—When statute of limitations begins to run:—Where there was a bailment for hire to be terminated when demand made for thing bailed, *held* that in the absence of demand the statute began to run upon the death of the bailor. *Wingate* v. *Wingate,* 11 Tex. 430; *Hunter et al.* v. *Hubbard,* 26 Tex. 537.

B.

Ordinary care:—The liability of a warehouseman for the protection of goods intrusted to him extends only to the exercise of ordinary care. *T. & P. Ry. Co.* v. *Schneider & Davis,* 1 App. Cas. sec. 118; *Same* v. *Morse,* 1 App. Cas. sec. 412; *Same* v. *Wever,* 3 App. Cas. sec. 60; *Coffield* v. *Harris,* 2 App. Cas. sec. 315; *Chicago, R. I. & P. Ry. Co.* v. *Bulley & Son,* 140 S. W. 480.

Delivery—To bailor after notice of real owner's claim—Conversion—Rule stated:—"If the bailee have the temporary possession of the property, holding the same as the property of the bailor, and asserting no title in himself, and in good faith, in fulfillment of the terms of the bailment, as expressed by the parties or implied by law, restore the property to the bailor before he is notified that the true owner will look to him for it, no action will lie against him for he has only done his duty." If delivery be made to the bailor after notice of owner's claim, it will constitute a conversion. In case of demand by one other than bailor, the

bailee has a reasonable time in which to ascertain who is the owner of the property. A failure to deliver to the true owner will not constitute a conversion until after the expiration of a reasonable time from time of demand. *Roberts* v. *Yarboro*, 41 Tex. 449; *Horseley* v. *Moss & Pennington*, 5 Tex. C. A. 341.

Same—To wrong party:—Plaintiff, a compress company, received five bales of cotton from W. and issued its receipts therefor. Subsequently R., claiming to be the owner of the cotton, ordered it shipped out, which was done. Afterward other parties presented the compress receipts and demanded the cotton. Plaintiff purchased other cotton and honored the receipts. Action against R. for value of cotton purchased. Judgment was rendered against R. and a bank which had advanced money to W. upon the receipts was held liable to R. on its guaranty to hold him free from loss. *Nat'l Bank of Denison* v. *Roundtree*, 115 S. W. 639.

Conversion—Delivery after notice of adverse interest in property stored—Public ginners:—The plaintiff sued the defendant for the conversion of one-half interest in certain cotton which had been sent to the latter to be ginned. It appeared that the plaintiff was the owner of a certain plot of ground and that he contracted with the lessee that one-half of all the cotton produced by him on such ground was to belong to the plaintiff. After the cotton reached the defendants' gin the plaintiff notified them of his claim and instructed them not to deliver the cotton without his order. Subsequently the defendants delivered the cotton to the lessee contrary to the instructions of the plaintiff. It was *held* that this action on the part of the defendants constituted a conversion of the plaintiff's interest in the cotton stored. It was further *held* that the plaintiff had something more than a landlord's lien on the crops; he had a specific interest in the crops themselves, it appearing that the plaintiff furnished not only the land but also tools, implements and the necessary teams. That, therefore, the landlord and tenant act did not apply, for it was not intended by the legislature, by this act, to take away the rights of parties to make any contract they might deem proper in regard to the ownership of crops raised or any other matter concerning the same. *Horsely* v. *Moss & Pennington*, 5 Tex. C. A. 341.

Same—Vendee of bailee must return goods to either bailor or to true owner, or he is liable for their value:—H., a warehouseman, received certain goods on storage. Later he sold the warehouse to J., and J. received possession of the warehouse with the property therein. J. then sold the warehouse to M., who converted the goods to his own use. Action by owner of goods against J. *Held:* that J., receiving the goods under the circumstances, was liable as a depositary bailee, and was liable for gross negligence in delivering goods to M. in absence of evidence that M. was a responsible person. In view of M.'s announced purpose of disposing of the goods, it was the absolute duty of J. to either return the goods to his bailor, H., or to the true owner, and his failure rendered him liable for their value. *Rex* v. *James*, 131 S. W. 248, 249.

C.

Safe deposit boxes—Liability for loss of contents:—Plaintiff rented a safe deposit box of defendant and deposited therein a sum of money which was missing when plaintiff next opened the box. During this interval of time plaintiff lost the key and, by finding, it came into possession of defendant. The defendant was a bailee for hire with reference to contents of box, and plaintiff was only required to show the deposit of the money in the box and the disappearance of the same therefrom, to make out prima facie case of liability. Defendant was at all times required to exercise that degree of care which a prudent person would have exercised to prevent unauthorized third persons from having access to the box. The jury found for the plaintiff, and the judgment was affirmed on appeal. *Guaranty Trust Co.* v. *Diltz*, 42 Tex. Civil App. 26, 29.

M.

Pledge—Agreement—Right to sell—Pledgee need not wait for most favorable market:—If the agreement by which a pledge is made fails to provide that the pledgee may sell the property deposited, the pledgee has the right to sell the same after default, demand made and notice given. By agreement parties may contract and regulate in advance the remedy which the creditor must pursue in subjecting the property pledged to the payment of the debt; further, such an agreement may contain a valid provision to the effect that no notice need be given after default

and that sale may be either at auction or privately. In the absence of such agreement as to notice, the pledgee must give a reasonable notice of the time, place and manner of sale. The pledgee is not obliged to wait until the most favorable market may be secured for the sale of the property. *King & Co.* v. *T. B. & Ins. Co.*, 58 Tex. 669.

N.

Loss by fire—When warehousemen liable:—Where goods in storage have been destroyed by fire the warehouseman is liable for the resulting loss if he were guilty of negligence, indifference or imprudence. *Vincent* v. *Rather*, 31 Tex. 77.

Same—Extent of warehouseman's liability:—A warehouseman is only responsible for the loss of goods destroyed by fire in his warehouse, when it can be shown that the loss was due to the negligence or lack of ordinary care on the part of the warehouseman or his servants. *Texas & P. Ry. Co.* v. *Weaver*, 3 App. Cas. sec. 61; *M. P. Ry. Co.* v. *Douglas & Sons*, 2 App. Cas. sec. 30.

Same—Negligence—Insurance company subrogated to the rights of assured:—Defendant granted B. permission to erect a warehouse on its right of way, upon agreement to save defendant harmless from any demand on account of construction and maintenance of building, and also to insure building and contents for benefit of defendant; and that defendant should not be liable for loss by fire to building or contents caused by its engines, etc. B. sold certain contents of building to plaintiff, and assigned policy to plaintiff, excepting from such transfer certain interests. Loss occurred and insurance company paid B. therefor. *Held:* that insurance company was subrogated to rights of assured and to all rights that assured may have had against defendant for the negligent destruction of its property by fire. When a railway company negligently destroys the property of a third party it is liable for the loss, whatever may have been its contract with another party on whose premises the property was stored. *McAdams* v. *M. K. & T. Ry. Co.*, 19 Tex. Civ. App. 82.

Same—Storage of cotton incident to its compression:—Cotton was left with defendant compress company for compression and a charge made for the compression but not for storage. It was damaged by fire. *Held:* that the storage of the cotton was an

incident to its compression and that it was defendant's duty to exercise ordinary care in the storage of same. *Loeb Compress Co.* v. *Bromberg & Co.*, 140 S. W. 475, 477.

Same—Evidence to prove negligence:—Where it appeared that cotton was packed near the old tracks of a railroad, that an engine ran by at a high rate of speed emitting a large quantity of sparks, *held* these facts were sufficient to show negligence on the part of the railroad. *Texas & Pac. Ry. Co.* v. *Weaver*, 3 App. Cas. sec. 61.

Same—Same—Burden of proof on plaintiff:—The burden of showing that a fire which resulted in the loss of plaintiff's goods was caused by the negligence of the defendant, a warehouseman, is upon the plaintiff. *T. & P. Ry. Co.* v. *Capps*, 2 App. Cas. sec. 36.

O.

Measure of damages:—Action for damage to corn stored. The ordinary measure of damages is the difference between the value of the corn before the damage was done at the time agree on for redelivery and its value after the injury. *Held:* that the plaintiff was also entitled to recover, in addition, the storage charges paid by it after the six months' period had elapsed, as well as certain freight charges advanced to the railway company and which would have been repaid had the corn been moved from the elevator within the agreed six months. *Arbuckle Bros.* v. *Everybody's Gin and Mill Co.*, 148 S. W. 1136.

P.

Advertising "Fireproof" warehouse—Storage in another warehouse not fireproof not due care—Mistake—Custom:—The owner of cotton shipped the same by railroad to the defendant for storage and sale. Through an error the cotton was received at another warehouse. Such other warehouseman recognized the defendant as the consignee and real factor. The defendant thereupon sent to the owner his warehouse receipt in which it was stated that the cotton was stored in his own warehouse, and a letter accompanied the same which explained the circumstances. It appeared that the warehouse in which the cotton was actually stored was not fireproof and further that the defendant's warehouse was fireproof and that he had advertised this

fact. There was also evidence to show that it was probable that the owner knew that the defendant's warehouse was fireproof and that it constituted an inducement for him to have his cotton stored therein. Shortly after its storage the cotton and warehouse were destroyed by fire. It was *held* that the owner of the cotton had the right to have the same stored in any warehouse which he might select, that it was the duty of the defendant to use due diligence and every reasonable precaution to protect and preserve the cotton and his allowing the cotton to remain stored in a warehouse which was shown to be of very inferior construction to that of his own did not constitute such diligence and precaution; that this liability could not be overcome by evidence of a usage in the city that where cotton was deposited in the wrong warehouse through a mistake it was the custom of warehousemen to allow it to remain there. *Vincent* v. *Rather*, 31 Tex. 77.

Insurance—By warehouseman on his own property and that of others:—In action against a warehouseman upon the theory that defendant had insured plaintiff's property in a fire insurance contract reading, "On hay in bale, their own or held by them in trust," etc., and after loss had collected and held proceeds for plaintiff; it was *held* error to exclude parol evidence to show that the policy did not cover the hay of plaintiff. Before plaintiff could claim any benefit under a policy executed under such circumstances, he must show that he elected to adopt the acts of defendant in procuring insurance on his property, of which defendants had notice before its force as a policy on his property had been impaired. *Pittman & Harrison* v. *Harris*, 24 Tex. Civil App. 503.

Same—Consignee to sell on commission may insure in his own name, and insurance agent by issuing policy to him and accepting premium, waives conditions inconsistent with such insurable interest:—Plaintiffs procured fire insurance upon stock of bar fixtures, etc., consigned to them for sale on commission. The insurance agent issuing the policy had knowledge of the title and ownership of property insured, but issued policy in name of plaintiffs without endorsing on the policy what was required by its printed terms, viz., a mention that the interest of the insured was other than unconditional and sole ownership. Plaintiffs,

by their contract with their consignor, were obligated to fully insure the goods. Defendants claimed breach of conditions of policy as to ownership and denied liability *Held:* that when the agent of the insurance company issued the policy in the name of plaintiff with a knowledge of the ownership and title of the property insured, he, for the company, waived the provisions relied upon which would avoid the contract, and a judgment for defendant was reversed. *Wagner & Chabot* v. *Westchester F. Ins. Co.,* 92 Tex. 549, 555.

Same—Warehouseman collecting a charge sufficient to insure property for full value, and failing so to do, is liable for full value:—An action against warehouseman for value of rice destroyed by fire while in defendant's warehouse. Plaintiff had delivered the rice to defendant to be milled at 35 cents a barrel and had also paid the defendant two cents per sack for insurance, as well as being charged for brokerage, etc. Defendant held an insurance policy covering all rice in the warehouse and after loss pro rated the insurance money received. Evidence showed that the two cents per sack charged was sufficient to pay for full value insurance for four months, and that loss occurred within 15 days. Evidence introduced of custom to insure rice for full value and a charge of two cents per sack for same. *Held:* if there was a custom or usage of trade under which rice mills charged a certain sum for full insurance on rice, and plaintiff acted with reliance upon that custom, which was known to defendant, his conduct in not using the tax levied on plaintiff for the purpose for which it was intended, by failing to insure for full value, could not relieve defendant of his liability for failure to insure. Judgment for plaintiff affirmed. *Broussard* v. *South Texas Rice Co.,* 120 S. W. 587, 591.

Q.

Warehouse receipt — Not a "Negotiable instrument" — Bona fide holder—Lost receipt—Indemnity not required:—Warehouse receipts which are in form payable to bearer are not negotiable in the sense of bills and notes under the law merchant. Even though one obtain possession of a warehouse receipt in a manner which would constitute him a *bona fide* holder of a negotiable instrument, nevertheless he cannot recover on such a receipt if the owner of the property represented thereby has not parted

with the title. It is well settled that the title to personal property cannot be derived from one who has found it or stolen it from the owner; therefore, to hold that warehouse receipts pass title to the property they represent, in the same manner as negotiable instruments pass title to money, would be in effect to place the symbol upon a better footing than the thing represented. The reason for the rule therefore, which requires indemnity from the loser of a negotiable instrument as a condition precedent to recover does not exist in the case of a lost warehouse receipt. *Clay & Browne* v. *Gage & Wood*, 1 C. A. 661.

Same—Non-negotiable receipt—Compress company entitled to notice of transfer:—The defendant compress company issued a receipt which after stating date, place, number, etc., provided: "Received from West Cotton Yard for account of Will Rives, mark ....., at owner's risk forty-two bales of cotton. Not responsible for water damage or loss or damage by fire. This receipt must be returned on delivery of cotton and is non-negotiable." Rives, for a valuable consideration delivered the receipt to a bank the defendant in error and thereafter Rives received the cotton from the compress company, stating the receipt was among his papers and would be delivered. The compress company had no notice of the transfer of the receipt by Rives. It was *held* that the receipt was not negotiable by the law merchant and was therefore within the terms of Secs. 308 and 309 of the Revised Statutes of the State hence the compress company was entitled to notice of the transfer from the bank and in the absence of such notice had the right to deal with Rives as the owner of the cotton. Rives in obtaining the cotton from the compress company without returning the receipt gave a reason which under the circumstances was reasonable and the compress company had the right to rely upon his statement. Judgments of the courts below in favor of the bank reversed and judgment directed in favor of the compress company. *Samford Compress Co.* v. *Farmer's & Mechanics Natl. Bank,* 143 S. W. 1142.

Same—Restrictions as to transfer:—Defendant, a cotton warehouseman, issued tickets containing provision "Transferable only on the books of yard." *Held*, that such restriction embodied in the ticket itself should at least be given the effect of requiring proof that tickets had been transferred on books of defendant,

or that cotton was in his possession when plaintiff acquired the tickets, and that while holding such possession, defendant received notice that plaintiff had bought the cotton. *Sanger* v. *Travis County Farmers' Alliance*, 37 Tex. Civil App. 321, 323.

Same—Transfer of, a symbolic delivery of property:—The transfer and delivery of a warehouse receipt to a purchaser or pledgee is a symbolical delivery of the property represented thereby. *Friedman, Keiler & Co.* v. *Peter et al.*, 18 Tex. C. A. 11.

Same—Delivery of warehouse receipt or bill of lading is a constructive delivery of property therein mentioned and pledgee may hold such property against all comers:—Appellee advanced money to a cotton buyer to pay for cotton, it being agreed that appellee should hold the cotton as security for the money advanced. When the cotton was shipped, the railroad executed its bills of lading therefor and these bills of lading were delivered to appellee in pursuance of the agreement. The receipt issued by a compress company stated on its face that it was *non negotiable* and was not endorsed. *Held:* that appellee by this dealing had the right to hold the cotton against all comers until its debt was paid; that bills of lading and warehouse receipts under the law are not considered negotiable in the sense that bills, notes, etc., are negotiable, but are regarded as representatives of the property covered by them, and when delivered, with or without endorsement, in accordance with the agreement of parties, constitute a sufficient constructive delivery to pass title to the property. *National Bank of Cleburne* v. *Citizens National Bank*, 41 Tex. Civ. App. 535, 538.

R.

Bill of lading—Only indicates prima facie ownership in consignee:—A bill of lading evidences *prima facie* ownership of the goods in transit in the consignee. Evidence may be given to show that the consignor is still the owner of the property. *Craig & Ogden* v. *Marx & Kempner*, 65 Tex. 649.

Same—Effect of transfer—Not "negotiable instruments":—The transfer of a bill of lading can give no higher title to the transferee than would a delivery of the property to him. Where bills of lading are made negotiable by statute the holder, in the absence of either title to the goods or authority to transfer them, cannot, by a transfer of the instrument, pass the right of property

in the goods, even though a *bona fide* purchaser for value; he can convey no greater rights than he himself has. *Lands* v. *Lattin Bros.*, 19 Tex. C. A. 246; *Freeman et al.* v. *Bank of Commerce*, 3 App. Cas. sec. 340; *Shaw* v. *Railway Co.*, 101 U. S. 557.

Same—A custom contrary to the terms of, must be proven to be uniform:—Where a custom to recognize depositors without the production of the storage tickets is relied upon, which is contrary to the terms of such tickets, the custom must be proven to be uniform and continuous. *Sanger* v. *Travis County Farmers' Alliance*, 37 Tex. Civ. App. 321.

T.

Liability for injury—Heavy boxes improperly packed:—The plaintiff, a drayman, called at the warehouse of the defendant for certain boxes belonging to his employer. Upon arriving at the warehouse, he went inside in order to ascertain which boxes he was to remove. Upon placing his hand upon one of the boxes for the purpose of identifying it, it toppled over causing him severe injuries. An instruction to the jury that if they found that the boxes had been negligently piled one upon the other and that if such negligence resulted in the injury to the plaintiff that they were to find for him, was *held* to be a correct instruction. *Mallory & Co.* v. *Smith*, 76 Tex. 262.

CHAPTER XLIV

UTAH.

LAWS PERTAINING TO WAREHOUSEMEN

The Uniform Warehouse Receipts Act is in force in Utah. It took effect July 1, 1911, Laws of Utah, 1911, Ch. 139, p. 271. Also this volume, p. 1.

The sixtieth section of the act is as follows:

Repeal:—Section 1403 of the Compiled Laws of Utah, 1907, and all acts or parts of acts inconsistent with this act are hereby repealed.

Embezzlement defined:—Embezzlement is the fraudulent appropriation of property by a person to whom it has been intrusted. Compiled Laws of Utah, 1907, sec. 4374.

By bailee, tenant, attorney in fact:—Every person intrusted with any property as bailee, tenant, or lodger, or with any power of attorney for the sale or transfer thereof, who fraudulently converts the same, or the proceeds thereof, to his own use, or secrets it or them with a fraudulent intent to convert to his use, is guilty of embezzlement. *Id.* sec. 4378.

DECISIONS AFFECTING WAREHOUSEMEN

H.

Storage charges—Lien—Not waived by suit for amount due—Lien may be enforced by equitable action:—In a replevin suit for goods on storage with the defendant warehouseman it appeared that plaintiffs were the executors under the will of M., who had stored the goods. Defendant had presented its claim to them as executors and it had been rejected. Defendant then sued the executors on the account and did not assert its lien. After the institution of the replevin suit defendant dismissed its suit on the account and answered in the replevin suit asserting its warehouse-

man's lien for its charges under sec. 1403 of the Compiled Laws 1907. The executors responded denying the lien, pleading the statute of limitations and further that defendant had waived and lost its lien by having elected its remedy in its suit on the account. It was *held* that the lien given by section 1403 was not exclusive as section 1405 gives to the lien claimant concurrent or cumulative remedies and that such claimant could pursue either without waiving the other, except that he could not receive more than satisfaction of his claim. Also, *held* that such a lien could be foreclosed by an equitable action. *Howard* v. *J. P. Paulson Co.*, 127 Pac. 284.

CHAPTER XLV

VERMONT.

LAWS PERTAINING TO WAREHOUSEMEN

The Uniform Warehouse Receipts Act, with the changes here noted, is in force in Vermont. It was approved December 12, 1912, Laws of Vermont 1912, No. 186, p. 226. See this volume p. 1. The first section of the Act as enacted in Vermont is as follows:

"Warehouse receipts may be issued by a warehouseman as provided for in and authorized by section 4998 of the Public Statutes."

The section of the Public Statutes mentioned is given below.

By the sixtieth section the following sections of the Public Statutes are repealed: 4999, 5000, 5001, 5002, 5003, 5004, 5006, 5007, 5008 and 5009.

Establishment—Receipts:—A person may establish and maintain a public warehouse, and may receive goods, wares, merchandise, provisions and other commodities for storage therein, and shall issue warehouse receipts therefor to the person from whom such property is received; and he may issue warehouse receipts for his own property stored in such warehouse; but no person shall issue a receipt for such property received for storage, or for his own property stored in such warehouse, unless he displays and maintains in a conspicuous manner, on the front of the building used as such warehouse, the words "Public Warehouse." Public Statutes, Vermont, 1906, sec. 4998.

Penalty—For violating chapter:—A warehouseman or other person who willfully violates a provision of this chapter shall be imprisoned not more than three years or fined not more than one thousand dollars, or both; and a person aggrieved by the violation of such provision may maintain an action on the case founded on this statute against such person to recover immediate or consequential damages which he has sustained by reason of

such violation whether such person is convicted of such violation or not. *Id.* sec. 5005.

DECISIONS AFFECTING WAREHOUSEMEN

A.

Bailment—Special contract:—A bailee may make a special contract with his bailor by which he will be absolutely liable for the goods; or he may restrict his common-law liability, provided such restrictions do not attempt to exempt him from loss or damage due to his negligence. *Ames & Co.* v. *Melendy*, 64 Vt. 554.

Same—Power of sale—Personal trust:—A bailment of property with the power of sale is a personal trust to the bailee which he cannot delegate. *Hunt* v. *Douglass*, 22 Vt. 128.

B.

Ordinary care:—A warehouseman is bound only to use ordinary care and diligence in the safe-keeping of goods intrusted to him. *Blumenthal* v. *Brainerd et al.*, 38 Vt. 402; *Gleason* v. *Estate of Beers*, 59 Vt. 581; *Briggs* v. *Taylor*, 28 Vt. 180.

Same—No title in bailor:—If a warehouseman receive goods, and the bailor has no title thereto, and such goods are taken from the custody of the warehouseman by the authority of the law, as the property of a third person, the warehouseman may show this in defense of an action brought against him by the bailor for the goods. *Burton and Ano.* v. *Wilkinson and Ano.*, 18 Vt. 186.

Same—Sheriff breaking outer door:—If the goods of the debtor are secreted in the warehouse of a third person, the sheriff will be justified in breaking open the outer door for the purpose of taking them by due process of law, if admittance is refused him, after he has demanded it from the proper person; and he may do this in the night as well as day. *Id.; Fullam et al.* v. *Stearns*, 30 Vt. 443.

Same—Action for trespass:—Plaintiffs sued in trespass for the breaking and entering of their warehouse by the defendants and the taking of certain goods therefrom. Defendants pleaded they took the goods by virtue of legal process. The plaintiffs replied that the goods were the property of A and not of the debtor. The defendants rejoined, setting forth that A had

brought an action against them for the goods, and in a trial on the merits judgment had been given for defendants. *Held,* on demurrer to this rejoinder, that the matter was well pleaded, and that the defendants were entitled to judgment. *Burton and Ano.* v. *Wilkinson and Ano.,* 18 Vt. 186.

Conversion—Wrongful sale:—A wrongful sale of property by a bailee is a conversion thereof as to both the bailee and the purchaser. An action of trover will lie against both for such a conversion. *Buckmaster* v. *Mower & Ford,* 21 Vt. 204.

L.

Trover—Will lie against bailee if property put to an improper use:—If the bailee apply the thing bailed to a different use from that for which it was bailed, his interest is determined, and the bailor may sustain trover for the injury. *Swift* v. *Moseley,* 10 Vt. 208; *Buckmaster* v. *Mower & Ford,* 21 Vt. 204; *Alvord* v. *Davenport,* 43 Vt. 30.

Same — Wrongful detention:— An action of trover will lie against a bailee for the wrongful detention of property intrusted to him after failure to deliver on demand. *Dohorty* v. *Madgett,* 58 Vt. 323.

P.

Insurance—Insurable interest—Warehouseman compromising loss by fire liable to bailor for full value:—Plaintiff had certain goods on storage with defendant. Defendant had an insurance policy covering goods "their own, or held in trust, or on commission." In adjusting loss under the policy with insurance company, the defendant, without knowledge of plaintiff, compromised the claim for damage for less than the full amount of insurance covering all the goods. *Held,* that defendant was liable to plaintiff for full value of plaintiff's goods, notwithstanding settlement with insurance company. The special property of a bailee for hire is of sufficient value to give him an insurable interest in the subject of the bailment. *Southern Cold Storage and Produce Co.* v. *Dechman,* 73 S. W. 545.

R.

Bill of lading—Exemptions—Conditions printed on the back thereof:—In a case where there were exemptions and conditions printed on the back of a bill of lading, which were not referred to

on the face thereof, and there was no evidence in the case to show that notice of these conditions had been brought to the attention of the shipper of the goods, it was *held* that as the face of the instrument imported an absolute and express undertaking that evidence modifying this undertaking should come from the party apparently so bound. *Newell et al.* v. *Smith & Clark*, 49 Vt. 255.

Same—Effect of transfer as collateral:—The endorsement and transfer of a bill of lading, as collateral security for the payment of a draft, vests in the transferee title to the property represented by the bill of lading. *Tilden* v. *Minor et al.*, 45 Vt. 196; *Davis & Aubin* v. *Bradley & Co.*, 28 Vt. 118.

CHAPTER XLVI

VIRGINIA.

LAWS PERTAINING TO WAREHOUSEMEN

The Uniform Warehouse Receipts Act is in force in Virginia, with the exception of the sixty-first section which is omitted, and the sixtieth section, which is as follows:

Inconsistent legislation repealed:—All acts or parts of acts inconsistent with this act are to that extent hereby repealed. The act was approved March 14, 1908, Acts of Assembly 1908, Ch. 290, p. 508, also appears in supplement to Virginia Code, Pollard, 1910, p. 801. Also this volume p. 1.

Transfer of receipts issued by licensed warehouses:—Warehouse or other storage receipts, with the word "negotiable" plainly written or stamped on the face thereof, issued by any person keeping a licensed warehouse or other licensed place of storage in this state, for goods, wares, merchandise, cotton, grain, flour, tobacco, lumber, iron, or other commodity stored with such person, shall be transferable by indorsement and delivery, whether the property specified in such receipt be owned by the person issuing the same, or another; and any person to whom such receipt is so indorsed and delivered shall be deemed the owner of the property specified therein so far as may be necessary to give effect to any sale to such person, or to any pledge or lien for his benefit, created or secured by such transfer, whether the receipt and indorsement be admitted to record or not, subject however to storage and other charges of the person keeping such place of storage. Code of Virginia, Pollard, 1904, sec. 1791.

When receipts not to be issued; duplicate receipts:—No person shall issue any such licensed warehouse or other licensed storage receipt unless he be the keeper of a regularly licensed warehouse or other licensed place of storage in this state for goods, wares, merchandise, cotton, grain, flour, tobacco, lumber, iron, or other commodity stored with such person and shall

have duly paid to the commonwealth the tax for such license, and unless the property therein mentioned shall be actually in store or in his premises and under his control at the time of issuing such receipt, nor shall a second or duplicate receipt for any property be issued while a former receipt for such property or any part thereof is outstanding and uncancelled without having written or stamped in plain letters across the face of such second or duplicate receipt the word "duplicate"; and the said duplicate shall express on its face the reason for the issuance of the same, stating whether the original receipt was lost, burned or stolen, and the person to whom said duplicate receipt is issued shall give to the warehouse issuing the same a bond in the penalty of double the value of the article for which said original receipt was given; and it shall be the duty of such person keeping such licensed warehouse or licensed place of storage to cause to be posted prominently over the door of his place of business a sign indicating that such warehouse or place of storage is duly licensed; and such person shall also cause to be written or stamped in plain letters upon the bill-heads and envelopes used by him in said business words indicating that the warehouse or place of storage kept by him is duly licensed. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction fined not less than fifty dollars nor more than one hundred dollars for each offense. *Id.* sec. 1792.

Prohibition against sale, etc., of property for which receipt was issued, without its surrender:—No person shall sell, incumber, transfer, deliver, remove, or permit to be removed beyond his immediate control, except to enforce his lien for storage and other charges, any property for which a receipt has been given as aforesaid, without the surrender and cancellation of such receipt or the consent of the holder indorsed thereon, or, in case of any partial delivery, the indorsement of such delivery thereon. Nothing herein contained shall be so construed as to prohibit the *bona fide* delivery of the property to the person entitled thereto, if the receipt be lost or destroyed: *Provided,* that before such delivery is made, notice of such loss or destruction be inserted for two successive weeks in a newspaper published in the city or county where the place of storage is, or if there be no newspaper published in the county, the notice shall be posted for two successive weeks at the front door of the courthouse of such county,

and proof of such publication or posting shall be filed with the person by whom the receipt was issued. Nor shall anything herein contained be so construed as to impose any liability on any depositary for any property mentioned in any receipt as aforesaid taken from his possession by any legal process, but it shall be his duty, when such property is so taken from his possession, or any process affecting or relating thereto is served on him, forthwith to give notice of the fact, if practicable, to the holder of such receipt. *Id.* sec. 1793.

Storage of property—A bailment—What receipt to state:—Whenever any grain shall be delivered to any person for storage as provided in section seventeen hundred and ninety-one, such delivery shall in all cases be deemed a bailment and not a sale of the property, nothwithstanding what is so delivered shall be mingled by the depositary with the grain of other persons. The grain so delivered, or any of like kind and grade substituted for it by the depositary, shall not be subject to any of the liabilities of said depositary whatever. In any receipt given for the storage of grain as aforesaid, it shall be sufficient to state the kind, grade and quantity of the grain so stored. *Id.* sec. 1794.

Wrongful removal of property by warehouseman—Larceny—Penalty for other violations:—If any warehouseman or other depositary, by whom a receipt has been given as aforesaid, wrongfully and fraudulently remove, or permit to be removed from its place of storage, the property mentioned in such receipt, or any part thereof, he shall be deemed guilty of larceny thereof. If such warehouseman, or other depositary, wrongfully and fraudulently violate any other provision of this chapter, he shall be fined not exceeding one thousand dollars, or, in the discretion of the jury, be confined in jail not exceeding three years. *Id.* sec. 1795.

Forgery of receipts—Penalty:—If any person wrongfully and fraudulently make or issue any paper purporting to be a storage receipt as aforesaid, or wrongfully and fraudulently alter any storage receipt, he shall be confined in the penitentiary not less than two nor more than ten years. *Id.* sec. 1796.

Establishment of warehouses—Their Discontinuance:—Tobacco warehouses, which were public warehouses of the day before this Code takes effect, shall continue to be such;

and the several county and corporation courts may hereafter authorize the erection of tobacco warehouses, or may establish the same, as public warehouses, within their respective counties and corporations; which said warehouses shall be constructed, or shall have been constructed, so as to keep safely, and guard against fire and weather as far as practicable, all tobacco stored therein, and shall be kept in good repair and at all times (Sundays excepted) be open for receiving, storing, selling, and delivering tobacco: *Provided*, That the owner of any such warehouse shall have the right to discontinue the same as a public warehouse, after having published a notice of his intention to do so once a week for four successive weeks in some newspaper published in the county or corporation wherein such warehouse is situated, or if no newspaper be published therein, after having posted such notice at the front door of the courthouse of such county or corporation for four successive weeks. *Id.* sec. 1797.

Samplers—Their appointment and term:—For each such public warehouse there shall be two samplers of tobacco, who shall be appointed by the governor, by and with the advice and consent of the senate, for the term of four years, commencing on the first day of October succeeding their appointment. They shall be appointed in January or February of the year eighteen hundred and ninety, and every fourth year thereafter, and the samplers in office when this code takes effect shall continue therein until the term for which they were appointed shall have expired by limitation. *Id.* sec. 1798.

How vacancy filled:—If a vacancy occur in the office of sampler during his term, the governor shall appoint another in his place to serve for such part of the term as shall not have expired. *Id.* sec. 1799.

Qualification and bond:—Every sampler shall, within sixty days after his appointment, qualify and give bond before the court of the county or corporation wherein the warehouse for which he is appointed is situated, in the penalty of ten thousand dollars. If he fails to qualify and give bond within the time prescribed his office shall be deemed vacant. Within thirty days after the execution of such bond, the clerk of the court in which it is given shall transmit a copy thereof to the auditor of public

accounts, and if he fail to do so, he shall for such failure forfeit one hundred dollars. *Id.* sec. 1800.

Deputy samplers:—Any sampler may nominate to the governor a deputy, who shall be appointed by the governor, if approved by him. Such deputy, after taking the oath required of his principal, may perform any of the duties of his principal, whenever the principal is unable to perform the same; and the principal and the sureties on his official bond shall be responsible for all the acts of his deputy as such. *Id.* sec. 1801.

New samplers to give receipts to predecessors:—New samplers, appointed at any such warehouse, shall give to those whom they succeed, a receipt, containing the numbers, marks, and gross tare and net weight, of every hogshead or cask of tobacco which shall be then at the warehouse. They shall be thereupon chargeable with the delivery of such hogsheads and casks of tobacco, but in no way accountable for any loss of weight or defect of quality of said tobacco, which may have occurred without their fault. *Id.* sec. 1802.

Sampling, weighing and branding tobacco:—The samplers shall uncase and break every hogshead, cask, tierce or box of tobacco brought to their respective warehouses to be sampled; weigh and sample it, and mark or brand the same, as "Virginia" or "Western," according to the facts; and also with the name of the warehouse, the tare of the hogshead, cask, tierce, or box; the quantity of net tobacco therein, and the condition thereof. The net weight shall be ascertained by weighing the hogshead, cask, tierce or box before it is uncased, and deducting therefrom the weight of the empty hogshead, cask, tierce or box. The sample shall not exceed eight pounds weight, and shall belong to the buyer of the tobacco from whom it was taken. *Id.* sec. 1803.

Weighing leaf tobacco in warehouses; proprietors to furnish itemized statements; penalty:—(1) All leaf tobacco sold upon the floor of any tobacco warehouse in the state of Virginia shall first be weighed by some reliable person who shall have first sworn and subscribed to the following oath—to wit:

I do solemnly swear (or affirm) that I will correctly and accurately weigh all tobacco offered for sale at the warehouse of ————————, and correctly test and keep accurate the scales upon which the tobacco so offered for sale is weighed.

Said oath is to be filed in the office of the clerk of the county or city court of the county or city in which said warehouse is situated.

(2) The proprietor of each and every warehouse shall render to each seller of tobacco at his warehouse a bill plainly stating the amount charged for weighing and handling, the amount charged for auction fees, and the commission charged on such sale, or any other charges made for selling and handling such tobacco.

(3) That for each and every violation of the provisions of this act a penalty of ten dollars be enforced, and the same may be recovered by any one so offended. *Id.* sec. 1803a.

Sampler's receipts:—The samplers shall thereupon, if required by the owner or his agent, give a receipt or note for every such hogshead, cask, tierce, or box in the following form, if the tobacco be good, sound, well-conditioned and merchantable:

"———————— Warehouse.

"The ——— day of, ———, 18—.

VIRGINIA TOBACCO.

Marks.	No.	Gross.	Tare.	Net.	
					Received of————————hogsheads, etc., of tobacco, marks, numbers, weights, and species, as per margin, to be delivered to the said————or order, on demand. Witness our hands. "SAMPLERS."
Passed:					

Id. sec. 1804.

When tobacco unsound, etc., or western, what receipt to state:—If the tobacco, received to be sampled, be found to be not good, sound, well conditioned, merchantable and clear of trash, the samplers, in addition to the marks required as to passed tobacco, if required by the owner or his agent, shall also give a receipt in the form prescribed for passed tobacco except that the word "refused" shall be plainly written on the face thereof, instead of the word "passed."

If the tobacco be of good quality, and only too high in order

for shipment, then the sampler shall not mark the receipt "refused," but shall mark it with the words "too high." If the tobacco sampled shall be western, the receipt shall so state. *Id.* sec. 1805.

Penalty for false branding, etc.:—If any person fraudulently make any false mark or brand upon any such hogshead, cask, tierce, or box, or with a fraudulent intent, alter, obliterate, or remove any mark or brand thereon, or shift the contents thereof, or cause the same to be done, he shall, for every such offense, forfeit fifty dollars. And if any person use, or permit to be used on any hogshead, cask, tierce, or box of tobacco, any name, brand, or mark indicating the name of a planter who neither raised nor sold said tobacco, he shall forfeit twenty dollars for each hogshead, cask, tierce, or box so falsely marked or branded; and if any person other than the owner, or the authorized agent of such owner, alter, obliterate, or remove any mark or brand upon any prized package of tobacco, or otherwise divert said prized package from the warehouse to which it was directed to be weighed and sampled, he shall forfeit fifty dollars for each offense. *Id.* sec. 1806.

"Western tobacco" to be so branded:—Before any unmanufactured western tobacco, whether stemmed or unstemmed, brought to Virginia in hogsheads or prized packages, shall be offered for sale, or shipped, or exported therefrom, except such tobacco *in transitu* the owner thereof, his agent, or a sampler of tobacco, shall mark or brand each hogshead or package with the words, "Western tobacco." If any person shall sell or offer for sale, or ship or export any such tobacco representing the same by marks, brands, or otherwise as Virginia tobacco, he shall be fined not less than fifty nor more than one hundred dollars, for each hogshead or package so sold or offered for sale, one half to go to the use of the state and the other half to the informer. *Id.* sec. 1807.

Loose tobacco:—The samplers shall receive and weigh all loose tobacco brought to their warehouses, and give certificates for the same, and issue manifests thereof when delivered out. *Id.* sec. 1808.

Samplers to give receipts:—They shall, immediately on the delivery of any tobacco to their warehouses, if required by the

person bringing the same, give a receipt therefor, describing the same as unsampled tobacco. Any sampler refusing to do so shall forfeit to the owner of such tobacco fifty dollars. *Id.* sec. 1809.

Penalty for delivering tobacco without order of owner:—Any sampler who shall deliver from his warehouse any tobacco without an order from the owner or his authorized agent, shall, for every hogshead, cask, or parcel of tobacco so delivered, forfeit to the owner one hundred and fifty dollars. *Id.* sec. 1810.

Samplers to furnish manifests:—The samplers shall furnish with all tobacco delivered out of their warehouses, if required by the owner or his authorized agent, a manifest or list of the same, describing, as in notes, receipts, or certificates given therefor, when the same was inspected, or, in the manifest thereof, when received from another warehouse. *Id.* sec. 1811.

Receipts, etc., to be printed and dated:—All notes or receipts and manifests shall be on printed blanks, and the date inserted at full length. *Id.* sec. 2812.

Penalty for illegal receipts, etc.:—Every sampler who shall issue a note, receipt, or manifest, in any other manner than is prescribed by law, shall be fined one hundred dollars. *Id.* sec. 1813.

Resampling:—The samplers of any warehouse, at the request of the owner, or his authorized agent, of the sampled tobacco stored therein, shall resample and weigh it, and if found to be damaged, or that any part of it has been embezzled, it shall be so entered on their books, and be subject to the order of the owner. *Id.* sec. 1814.

Penalty for delivering wrong tobacco:—If any sampler deliver out, in discharge of any note or receipt, other tobacco than that for which the same was issued, or alter or shift any tobacco from the hogshead or cask, in which the same was received, except in a case expressly authorized by law, he shall be fined for every such offense one hundred and fifty dollars. *Id.* sec. 1815.

Penalty for not delivering tobacco on demand:—If any sampler fail to deliver any tobacco, when it is demanded, to the owner thereof, or his authorized agent, he shall forfeit to such owner double the value of such tobacco. *Id.* sec. 1816.

Samplers to keep books—What entries to make:—The samplers shall provide and keep books, in which they shall enter the numbers, weights, marks, the names of owners of all tobacco received, sampled, or delivered out by them, as well at the time the same was received as at the time the same was sampled or delivered out, and note the state and condition of each hogshead, cask, tierce, or box; and in which, also, they shall keep fair and true accounts of all money received by them to the use of the proprietors of the warehouses. *Id.* sec. 1817.

Not to buy tobacco, etc.:—If any sampler directly or indirectly, buy, stem or manufacture any tobacco other than tobacco grown on his own plantation, he shall forfeit ten dollars for every hundred pounds of tobacco so bought, stemmed or manufactured. *Id.* sec. 1818.

Discharge from liability on delivery of tobacco:—If any hogshead or cask of tobacco be delivered out by a sampler, and received by the owner, such sampler, from the time of such delivery, shall be discharged from any liability by reason of the fact that the said tobacco was unsound or unmerchantable, or of less quantity than the notes or receipts given for the same specify, unless it be proved that such loss was due to the negligence of the sampler. *Id.* sec. 1819.

Samplers' fees:—There shall be paid to said samplers for each hogshead, cask, tierce, or box, weighing not less than five hundred pounds, sampled by them, one dollar for opening, sampling, coopering up, furnishing nails, marking, and weighing, to be paid by the owner. For a review, the fees shall not exceed one dollar; and for resampling the fees shall be the same. *Id.* sec. 1820.

For rent:—For each hogshead, cask, tierce, or box of tobacco, weighing not less than five hundred pounds, received, sampled, stored, or delivered out of any warehouse, rent shall be paid to the samplers at the following rates, to wit: Seventy-five cents for a period of four months, or any less time, and ten cents for each month or part of a month after four months that the tobacco shall remain in said warehouse, to be paid by the purchaser or person to whom the hogshead, cask, tierce, or box is delivered, which rent shall be for the exclusive use of the proprietors of the warehouse. *Id.* sec. 1821.

For storage:—For every hogshead, cask, tierce, or box, of the weight aforesaid, of sampled tobacco, received on storage at any warehouse, there shall be paid to the samplers thereof one dollar. *Id.* sec. 1822.

For delivering tobacco:—There shall be paid to the samplers of each hogshead, cask, tierce, or box, of five hundred pounds and over, delivered out of their warehouse, fifty cents, to be paid by the person to whom the hogshead, cask, tierce, or box is delivered. Where tobacco is reviewed or resampled in the same warehouse in which it was originally sampled, there shall be but one storage fee and one delivery fee, for each hogshead, cask, tierce, or box; *Provided*, that should there be any extra storage on said resampled tobacco, it shall attach to the resampled number, and be paid by the purchaser. *Id.* sec. 1823.

When only half fees to be paid:—For such services by the sampler, rent, and storage, as are mentioned in the four presiding sections, only one-half the amount prescribed therein shall be paid where the hogshead, cask, tierce, or package is of less weight than five hundred pounds, and the same shall be paid by the persons respectively mentioned in said sections. *Id.* sec. 1824.

Fees for sale of loose tobacco:—For all loose tobacco sold at any public warehouse, the following charges shall be paid, to wit: On every one hundred pounds of such tobacco so sold, eight cents shall be paid by the owner and the like sum by the purchaser, one-half of which shall be for the samplers and the other half for the proprietors of the warehouse; and there shall be no other charges or fees for loose tobacco sold as aforesaid, but the said charges shall be in full of all services rendered in respect thereto, including receiving, unloading, weighing, and delivering. *Id.* sec. 1825.

When fees to be paid:—The samplers shall require payment of all sums to be paid to the proprietors of their warehouses before the delivery of the tobacco for which they are due, and shall not be bound to deliver any such tobacco until such sums and all their own fees have been paid. *Id.* sec. 1826.

When sampler from another warehouse to act—How his fees are paid:—A sampler from another warehouse shall be authorized to act whenever his services shall be required in consequence of the disagreement in opinion of the two samplers

at any warehouse as to the quality of tobacco or in consequence of the absence of either of them, or to sample tobacco belonging to one of them. He shall be paid for his services, in the first case, out of the fees of the other two samplers in the proportion to the time he acts, and, in the other cases, out of the fees of the sampler who is absent, or whose tobacco is to be sampled. *Id.* sec. 1827.

Division of fees, etc., prohibited:—No sampler shall divide his sample fees with any person, nor shall any sampler or proprietor of any warehouse pay to another a bonus to induce tobacco to be carried to his warehouse; and if any sampler or proprietor of any warehouse violate this provision, or demand or receive for his services any other fees, greater or less than are allowed by law, he shall be deemed guilty of a misdemeanor; and any agent or representative of any person for the sale of tobacco, who receives any rebate or bonus of any part of the sampler's fees, or warehouse fees, shall be deemed guilty of a misdemeanor, and on conviction thereof be fined not less than twenty nor more than one hundred dollars: *Provided*, that nothing in this section shall be construed to prevent any sampler or proprietor of a warehouse from making and publishing a uniform reduction for the benefit of the public generally, of the fees to be charged at his warehouse for the services of such sampler, or the rent of such warehouse, respectively. *Id.* sec. 1828.

When samplers to settle with proprietors—Insurance:—The samplers of each warehouse shall account for and pay to the proprietor thereof, on the tenth day of April, the tenth day of July, the tenth day of October and the tenth day of January, in each year, all money received, or which ought to be received, by them, to the use of said proprietors. And the proprietors of every such warehouse shall keep, free of charge to the planter and the owner of tobacco, an open policy of insurance upon their respective warehouses, sufficient to cover every loss by fire or water which any person having tobacco stored therein may sustain; and for a failure so to do, they shall be liable to the owners thereof for any damage or loss they may sustain by reason of any partial or total destruction of said tobacco by fire or water. *Id.* sec. 1829.

Where tobacco of planter to be stored—To be sampled before sale:—Every commission merchant or other person, to

whom unmanufactured tobacco, in hogsheads or packages, owned by a farmer or planter is consigned for sale, shall store such tobacco in a public warehouse, where it is practicable, unless otherwise instructed in writing by the owner at the time of shipment, and it shall be unlawful for any person to offer such unmanufactured tobacco, when so stored in a public warehouse, for sale by sample, unless such sample has been drawn and certified by a sampler of tobacco appointed by the governor, and qualified according to law: *Provided*, that the owner of any package of prized tobacco, in person or by his authorized agent acting for him, may have the same exposed for sale, uncased and uncovered and sampled, as loose tobacco, in the presence of both buyer and seller, without being sampled according to the provisions of this section. *Id.* sec. 1830.

Proprietors to furnish scales, etc.:—The proprietor of every warehouse shall have proper scales or balances and weights, and all other proper conveniences provided, and see that they are kept in repair, and that the weights conform to the lawful standard. *Id.* sec. 1831.

Removal of samplers:—On complaint to the governor of neglect of duty or misconduct by a sampler, he shall hear the said complaint, upon giving notice of the time and place of hearing to said sampler, and being satisfied that the complaint is sustained, he shall remove him. *Id.* sec. 1832.

Use of false brand—Punished:—If any person use, or permit to be used, on any cask, box, or keg of manufactured tobacco, any brand or mark indicating a place or a manufacturer different from the place in which, or the manufacturer by whom, it was really manufactured, he shall forfeit ten dollars for each cask, box, or keg so falsely marked or branded; one-half thereof shall be to the informer. *Id.* sec. 1833.

Manufactured tobacco:—None of the provisions of this chapter, other than the preceding section, shall be construed to apply to manufactured tobacco. *Id.* sec. 1834.

Nesting punished:—If any person nest a hogshead or cask of tobacco with inferior tobacco, or other thing, with the intent to defraud the purchaser he shall be fined one hundred dollars for each hogshead or cask so nested. *Id.* sec. 1835.

Penalties for certain violation:—If any person violate any of the provisions of section eighteen hundred and twenty or of the sections following to 1826 inclusive, or of section 1830, he shall be fined one hundred dollars, one-half to go to the informer. *Id.* sec. 1836.

Record to be kept by commander of vessel, etc., for tobacco shipped:—The commander of any boat or vessel taking on board of his vessel any tobacco, in bulk or in parcels, otherwise than in hogsheads or casks, to be transported for hire from one part of the state to another part thereof, shall keep a record of the quantity of such tobacco, how incased, if at all, and the names and addresses of the consignors and consignees; which record shall be open to the inspection of any party interested. For every violation of this section, such commander shall be fined twenty dollars. *Id.* sec. 1837.

Punishment for receiving tobacco without consent of owner:—If the commander of such boat or vessel, or other person employed thereon, shall knowingly, without the consent of the owner, take any tobacco on board, or conceal the fact of its being on board, the party so offending, if he be the commander of such boat or vessel, shall forfeit ten cents for every hundred pounds weight of such tobacco; if he be a person other than the commander, shall forfeit twenty dollars for such offense. All tobacco put on board such boat or vessel without the knowledge of the owner shall be restored to him. *Id.* sec. 1838.

Publication of insurance:—Every proprietor of a public tobacco warehouse shall, at least once a year, publish in some newspaper published in this state, once a week for four successive weeks, a statement showing the amount of insurance he has on such warehouse, the companies in which the insurance has been effected, and the length of time the policies have to run. *Id.* sec. 1839.

Reprized packages:—Each sampler shall keep in a different column an account of all reprized packages from original samples. For the failure to comply with the provisions of this section, the sampler shall be fined one hundred dollars, and it shall be sufficient cause for removal from office. *Id.* sec. 1840.

Punishment for sending tobacco to wrong warehouse:—If any person or corporation send the tobacco of a planter or other

person to any warehouse other than that to which such tobacco is marked by the owner or his agent, the person or corporation so sending such tobacco shall be deemed guilty of a misdemeanor, and, upon conviction thereof, be fined not less than twenty nor more than fifty dollars for each package so sent. *Id.* sec. 1841.

Sale by samplers of unclaimed tobacco—Disposition of proceeds:—When any tobacco shall have remained in any warehouse in the city of Richmond undemanded for a term of one year from the time of its inspection therein, the warehouseman or other person having the tobacco in charge or entitled to the due thereon may advertise in some newspaper published in said city once a week for three consecutive weeks, a list of marks, numbers and weights of such tobacco, with the names of the persons to whom notes or receipts for it were given, and if no owner claims said tobacco and pays the accrued extra storage thereon within sixty days after date of such advertisement, they shall sell or cause the same to be sold on account of whom it may concern. The proceeds of such sale shall be paid into the state treasury, after deducting therefrom all dues and fees and the usual charges for selling. The amount so paid into the treasury shall be refunded to the owner of said tobacco, on the return to the person entitled thereto of the notes or receipts issued for the same. *Id.* sec. 1842.

Judges to charge grand juries:—The judges of the county and corporation courts, in such counties and corporations as have public tobacco warehouses therein, shall give the provisions of this chapter in charge to the grand juries. *Id.* sec. 1843.

Fraudulent sale, negotiation, pledge, or hypothecation of licensed warehouse or other licensed storage receipts, and to provide punishment in respect thereto:—Any firm or person, natural or artificial, who shall issue any licensed warehouse or other licensed storage receipt for farm product in his own name, being in possession of said farm product for or on account of another, and sell, negotiate, pledge, or hypothecate such licensed warehouse or other licensed storage receipt and fraudulently fail to account for or pay over to his principal or the owner of the property the amount so received on such sale, negotiation, pledge, or hypothecation less the charges and amount due him shall be deemed guilty of the larceny of such money or the farm

product of the receipt, and upon conviction thereof punished by confinement in the penetentiary not less than one year nor more than five years, and the failure to account for or pay over to such principal or owner shall be *prima facie* proof of fraudulent intent. *Id.* sec. 3718*a*.

Be it enacted by the general assembly of Virginia, That it shall be unlawful for any person to borrow money from any person, firm or corporation conducting a business as sales tobacco warehousemen upon a written promise or pledge to sell with or through said person, firm or corporation, any tobacco, and thereafter fail or refuse to comply with the conditions of said written promise or pledge. An Act to make it a misdemeanor to borrow money from sales tobacco warehousemen upon a written promise or pledge to sell tobacco with said sales tobacco warehousemen, and thereafter fail to comply with such written promise or pledge. Approved March 11, 1912. Acts Va. 1912, Ch. 130, Sec. 1.

Any person who shall fail to comply with such written promise or pledge to sell said tobacco with the said sales tobacco warehousemen after having borrowed money from the said sales tobacco warehousemen or to repay the amount so borrowed with legal interest thereon, shall, be guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than fifty dollars, or confined in the county jail not more than thirty days, or both, in the discretion of a court of competent jurisdiction. *Id.* sec. 2.

DECISIONS AFFECTING WAREHOUSEMEN

A.

Bailment and sale—Ambigious receipts—Questions for the jury:—Plaintiff's intestate delivered wheat to the defendant and received therefor a receipt in the following terms: "Received, June 4th, 1886, of William Reherd, seven hundred one and 51, of No. Two wheat in store, less five bushels paid Isaac Billhimer, for which we are to pay market price same quality of wheat whenever Mr. Reherd wants to sell same." The property was destroyed by fire and it was not alleged that the defendant was guilty of negligence. Upon demand being made of the defendant for the value of the wheat it was refused on the ground that the contract was one of bailment and not of sale

It was *held* on appeal that the plaintiff was entitled to have had the following instruction given to the jury and that the court's refusel thereof constituted reversible error: "If the jury believe from the evidence that William Reherd in his lifetime delivered the wheat which is the subject of controversy into the mill of the defendant, upon a contract with the defendants, that they, the defendants, should pay for the same in money at the market price whenever the said William Reherd should name the time of the market price therefor, and that the defendants had the right to use said wheat as they thought proper, then such contract was a *sale* of the wheat and not a *bailment.*" *Reherd's Admr.* v. *Clem & Wenger,* 86 Va. 374.

Same—Wheat to be ground—Fire—Bailment:—Where wheat is delivered at a mill to be ground, upon an agreement that the miller shall return to the farmer a given quantity of flour for so many bushels of wheat, the miller is a *bailee* and not a *purchaser,* and therefore if the wheat be consumed by accidental fire, the miller will not be responsible for it. This conclusion will not be altered by an understanding between the parties that the miller is not bound to return flour made from that identical wheat, but flour of a certain quality, made from any wheat in the mill. *Slaughter* v. *Green et al.,* 1 Rand. 3.

L.

Detinue — Bailee may maintain — Counts in declaration:— A bailee of chattels may maintain *detinue* for them upon his right of possession as bailee. Two counts in a declaration in *detinue,* one counting on a right of property in the plaintiff, and the other on a right of possession in him as bailee: *Held,* no misjoinder of actions. *Boyle* v. *Townes,* 9 Leigh, 158.

N.

Loss by theft—When reputation of bailee not in question:— Where property was intrusted to one and an action was brought against his administrator by the bailor for the recovery thereof, the defendant pleaded *non assumpsit.* The plaintiff alleged that the reputation and character of the original *bailee* was in issue because the declaration, being *assumpsit,* charged him with an intent to deceive and defraud the plaintiff, and as the defendant had failed to put in any testimony showing that the character

of the bailee was good, the counsel for the plaintiff relied on this fact as a significant one tending to show that the character and reputation of the bailee was bad. After argument of counsel on both sides, the court, on its own motion, instructed the jury that the character of the bailee was not in issue and that the jury should disregard all arguments made before them based on the failure of the defendant to introduce testimony as to the bailee's character. On appeal, this ruling was *held* correct on the ground that in civil cases evidence of general character is never receivable unless the nature of the action involves the character of the party or goes directly to affect the same. *Danville Bank* v. *Waddill's Admr.*, 31 Grat. 469.

P.

Insurance—Warehouseman's own goods—Pro rata distribution:—A warehouseman insured the contents of his warehouse, in which there was also stored some of his own goods, against loss of fire. It was *held*, after loss had occurred, that he could recover the full amount of insurance, that he was entitled to pay out of such sum all costs, including the cost of the policies paid either by himself or other owners, and attorneys' fees incurred in the collection thereof; and that the balance must be distributed *pro rata* among the several owners, including himself. *Boyd, Trustee et al.* v. *McKee et al.*, 99 Va. 72.

Warehouse receipt—When ambiguous, parol evidence will be received:—Where a warehouse receipt is ambiguous in its terms and is susceptible of explanation tending to show whether or not the contract was a sale or bailment, evidence will be received to show what was the purpose and intent of the parties. *Reherd's Admr.* v. *Clem & Wenger*, 86 Va. 374.

Same—Who may issue:—A corporation which by its charter was authorized to manufacture flour, meal, etc., and also to act as keeper of a public warehouse for the storage of merchandise, may issue warehouse receipts. *Millhiser Mfg. Co.* v. *Gallego Mills Co.*, 101 Va. 579, 589.

Same—Legal title to property represented by warehouse receipt vests in holder for value—Equitable estoppel:—The doctrine that a warehouse receipt vests in its *bona fide* purchaser for value, or in a *bona fide* pledgee for value, the legal title to

and possession of the property represented by the receipt, rests, not upon the theory of a symbolical delivery of the property, but upon the principles of equitable estoppel. *Id.*

Same—Rights of holders of warehouse receipt—Code Chap. 82 is declaratory of common law:—A *bona fide* holder of a warehouse or other storage receipt takes the same title to the goods which the receipt represents, as if the goods had been actually delivered to him. This is true, regardless of whether the transfer and delivery of the receipt be for a sale or for a pledge as collateral security for a loan. Without legislative enactment plainly expressing an intention to abrogate the common law rule with respect to warehouse receipts and elevator certificates, it is not within the power of the courts to take from them the nature and effect they are regarded as having at common law. Chapter 82 of the Code held merely declaratory of the common law as applied to *licensed* warehouses, adding such provisions as are deemed essential for the better protection of the holders of such receipts. *Id.*

CHAPTER XLVII

WASHINGTON.

LAWS PERTAINING TO WAREHOUSEMEN

The Uniform Warehouse Receipts Act is in force in Washington. It was approved March 17, 1913, Laws of Washington, 1913, Ch. 99, p. 279. See also this volume, p. 1.

Note:—See below Pierce's Washington Code, 1912. Tit. 521, secs. 1 to 8, and Tit. 267, secs. 111 and 113, which contain provisions similar to those in the Uniform Warehouse Receipts Act. Since the former were not by the latter expressly repealed, they are included herein.

Definitions:—The term public warehouse when used in this act includes any elevator, mill, warehouse or structure in which grain or hay is received from the public for storage, shipment or handling, whenever such grain or hay is carried or intended to be carried to or from such warehouse, elevator, mill or structure by a common carrier. The term terminal warehouse, when used in this act, includes any public warehouse situate in Seattle, Tacoma, Spokane or other cities in the state which may be hereafter designated as inspection points. The term warehouseman, when used in this act, includes any firm, person, company, corporation or association of persons owning, operating or controlling any public warehouse. The term "commission," when used in this act, means the railroad commission of Washington. Pierce's Wash'n Code, 1912, Tit. 211, Sec. 1.

Supervision by railroad commission:—The commission shall exercise general supervision over the handling, weighing, inspecting and storage of grain and hay, and, the management of public and terminal warehouses. Such commission shall investigate all complaints of fraud or injustice in the grain and hay trade, fix the charges of public and terminal warehouses, and make all necessary rules and regulations for carrying out and

enforcing the provisions of this act, and of all laws of the state relating to this subject. *Id.* Tit. 211, Sec. 2.

Chief Inspector—Bond—Pay:—The commission, with the approval of the governor, shall appoint a chief inspector, who shall be thoroughly familiar with the grains of Washington, and shall have had at least five years' experience in handling said grains and hay. He shall, before entering upon the duties of his office, give a surety bond (the cost of said bond to be paid by the state) to the State of Washington in the sum of ten thousand dollars, to be approved by the commission and the attorney general, and conditioned upon the faithful discharge of his duties, and take the usual oath required of state officers. He shall receive a salary of two thousand dollars per annum, and necessary traveling expenses, and shall reside at Tacoma. *Id.* Tit. 211, Sec. 3.

Deputies—Bonds:—The chief inspector, with the approval of the commission, shall appoint such number of deputies, inspectors, samplers and weighers as may be necessary to properly and thoroughly inspect and weigh grain and hay received and exported, and to carry out the provisions of this act. One of such inspectors in each of the cities of Seattle, Tacoma, Spokane and such other cities as may be designated by the commission, shall be styled chief deputy inspector. Such chief deputy inspectors shall be expert grain and hay men with at least three years' experience in handling grain and hay in Washington. The chief deputy inspectors shall each give a surety bond (the cost of said bonds to be paid by the state) to the State of Washington in the sum of five thousand dollars, to be approved by the commission and the attorney general, conditioned upon the faithful discharge of their duties. Such chief deputies shall receive a salary of fifteen hundred dollars per annum and necessary traveling expenses. All other inspectors, samplers and weighers shall give bond (the cost of said bonds to be paid by the state) to the State of Washington in the sum of three thousand dollars, to be approved by the commission and the attorney general, conditioned upon the faithful discharge of his duties. The salaries of such inspectors, samplers and weighers shall not exceed one hundred dollars per month. The chief deputy inspector, inspectors, samplers and weighers shall be required to take an oath to faithfully perform their duties; the duties of inspectors,

samplers and weighers may be interchangeable. *Id.* Tit. 211, Sec. 4.

Bonds filed:—The bonds of the chief inspector, his deputies, samplers and weighers, and all warehousemen, shall be filed in the office of the secretary of state of Washington, and any person injured by any official act or the neglect of duty of any such inspector, sampler or weigher, or by reason of neglect or failure of such inspector, sampler, weigher or warehouseman to comply with the provisions of this act, or of the rules and regulations of the commission, shall have a right of action upon such official bond for the recovery of all damages suffered thereby. *Id.* Tit. 211, Sec. 5.

Officer not to be interested:—No chief inspector, deputy inspector, sampler or weigher shall, during his term of office, be interested, directly or indirectly, in the handling, storing, shipping, purchasing or selling of grain or hay. *Id.* Tit. 211, Sec. 6.

Neglect of duty—Penalty:—Any inspector, sampler or weigher of grain or hay who shall be guilty of any neglect of duty, or who shall knowingly or carelessly inspect, sample or weigh any grain or hay improperly, or who shall, directly or indirectly, accept any money or other consideration for any neglect of duty or any improper performance of duty as such inspector, sampler or weigher of grain or hay, or any person, persons, corporation or agent who shall improperly influence or attempt to improperly influence any inspector, sampler or weigher of grain or hay, in the performance of his duties as such inspector, sampler or weigher, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars nor more than one thousand dollars, or imprisoned in the county jail not less than six months, nor more than one year, or by both such fine and imprisonment, in the discretion of the court. *Id.* Tit. 211, Sec. 7.

Inspection points:—The cities of Seattle, Tacoma and Spokane shall be provided with state inspection and weighing under this act. Such other cities and towns where grain and hay is received in carload lots or by water craft, and the shipments are such as would reasonably justify and render necessary the inspection of grain or hay, may be designated by the commission as inspection points and be provided with state inspection and

weighing: *Provided*, That the expenditure for the inspection and weighing at the points designated by the commission shall not exceed the receipts of fees at such place or places. *Id.* Tit. 211, Sec. 8.

All employees:—The chief inspector, his deputies, samplers and weighers shall be employees of the commission and may be removed at any time by the commission. They shall be paid in the same manner as other employees of said commission. *Id.* Tit. 211, Sec. 9.

Regulating charges:—All charges made by any public warehouseman subject to the provisions of this act for the handling or storage of grain and hay shall be just, fair and reasonable; and the commission is hereby vested with power and authority, upon the complaint of any person interested or by inquiry upon its own motion, after a full hearing, to declare any existing charge for the handling or storage of grain or hay, or any regulation whatsoever affecting such charge, or the receipt, handling or storage, to be unreasonable or unjust, and to declare and order what shall be a just and reasonable charge or regulation to be imposed or enforced in place of that found to be unreasonable or unjust. *Id.* Tit. 211, Sec. 10.

All laws apply:—All provisions of law relating to the method of procedure by the commission in fixing the rates to be charged by railroad companies for the transportation of freight and passengers, or the promulgation or issuance of rules and regulations, and the review of the acts or orders of such commission with reference thereto, and the enforcement of such orders, shall, so far as the same are applicable, govern the procedure of such commission in regulating public or terminal warehouses, and the review and enforcement of the acts and orders of the commission under the provisions of this act. *Id.* Tit. 211, Sec. 11.

Fixing grades—Hearing:—The commission shall, on or before the first day of July, 1911, fix standard grades to apply to all grain and hay thereafter bought or handled by public or terminal warehouses in this state. Such grades shall be known as Washington grades and shall continue until changed by the commission after notice as provided for the establishment of such grades. Such grades shall be fixed only after a public

hearing, notice thereof to be given by two weeks' publication in three principal daily newspapers of the state, one of which, at least, shall be in Eastern Washington. All persons desiring to be heard shall have a right to be heard and give such testimony as they may desire to offer. Such witnesses may be subpoenaed as the commission may deem necessary. The persons subpoenaed by the commission as witnesses shall receive $5.00 per diem for the time they are actually employed, and necessary traveling expenses.

The commission shall, at such time, after such hearing, make and issue reasonable rules and regulations governing the dockage which shall be made on inferior grades of grain and hay in all executory contracts thereafter entered into for the sale of grain or hay where the price or amount to be paid therefor depends upon terminal weight or grade, such rules and regulations shall control the dockage insofar as the same affects the price to be paid, and such rules and regulations shall become part of the contract of sale, unless expressly agreed to the contrary in such executory contract.

It shall be the duty of the chief grain inspector, immediately after the establishment of such grades and the promulgation of rules and regulations fixing dockage as herein provided, to supply all public and terminal warehousemen which the records in his office show are then or thereafter engaged in operating such warehouses, with a placard copy of such grades, rules and regulations. It shall be the duty of every public or terminal warehousemen to keep such placard posted in a conspicuous place in such warehouse, and if an office is conducted in connection with such warehouse, a copy shall be posted in a conspicuous place in such office. *Id.* Tit. 211, Sec. 12.

Fees for inspection:—The commission shall fix the fees for inspection and weighing of grain and hay, such fees to be a lien upon such grain and hay and to be paid by the carrier transporting the same and treated by it as advanced charges, except when the bill of lading contains the notation, "Not for terminal weight and grade," and the grain or hay is not unloaded at a terminal warehouse. The commission shall so adjust the fees to be collected under this act as to meet the expenses necessary to carry out the provisions thereof, provided that the fees fixed

for inspection and weighing shall in no case exceed five cents per ton for sacked grain; three cents per ton for bulk grain, and eight cents per ton for hay. All moneys collected under the provisions of this act and all fines and penalties for violation thereof shall be paid into the state treasury. *Id.* Tit. 211, Sec. 13.

Inspectors shall weigh—Records:—The chief inspector, his deputies and weighers, shall, at the places provided for state inspection under this act, have exclusive control of the weighing and grading of grain and hay which shall be inspected under the provisions of this act, and the action and certificate of such inspectors and weighers in the discharge of their duties shall be conclusive upon all parties interested: *Provided, however,* An appeal may be taken to the commission, whose decision shall be final. Suitable books and records shall be kept, in which shall be entered a faithful and true record of every car or cargo or part of cargo of grain or hay inspected or weighed by them, showing the number or initial or other designation of such car or cargo or part of cargo, its weight, the kind of grain, or hay and its grade, and if graded below standard No. 1 grade, the reason for such grade, if of inferior grade the amount of such dockage, the amount of fees and forfeitures and disposition of same, and for each car or cargo or part of cargo of grain or hay inspected they shall give a certificate of inspection showing the kind and grade of the same and the reason for all grades below No. 1, the amount to be allowed for dockage, if any, the number of sacks if sacked grain, or bales of hay, with the grade or grades and weight of same, if requested to do so by consignor or consignee. They shall also furnish the agent of the railroad company or other carrier over which grain was shipped or carried a certificate showing the weight of the grain or hay, if requested to do so. They shall also keep a true record of all appeals, decisions and a complete record of every official act, which books and records shall be open to inspection by any party in interest. *Id.* Tit. 211, Sec. 14.

Charges against inspector:—Upon written complaint filed with the commission charging any inspector, sampler or weigher with official misconduct, inefficiency, incompetency or neglect of duty, the commissioner shall investigate such charge and, if it be found sustained, shall remove such officer. *Id.* Tit. 211, Sec. 15.

Appeal from grading:—In case any owner, consignee or shipper of grain, or his agent or broker, or any public or terminal warehouseman shall be aggrieved at the grading of his grain or hay, such aggrieved person may appeal to the commission from such decision within thirty days from the date of certificate, and paying a fee to be fixed by the commission, which shall be refunded if the decision appealed is sustained. Such notice of appeal may be taken by a letter or notice to the commission that it appeals from the decision of the inspector. It shall be the duty of the commission, upon receiving such notice, to immediately notify the parties interested of the time and place designated by it for a hearing, and at such time and place, which shall be within twenty days from the date of receiving such notice, hold a hearing and inquire into the reasonableness and correctness of such original grading, and such evidence shall be received as the parties thereto may desire to offer. After such hearing the commission shall make such order affirming or modifying the grade so established by the inspector as the facts and evidence may justify. *Id.* Tit. 211, Sec. 16.

Export—Reinspection—Local shipments:—All grain and hay received at terminal warehouses shall be inspected and weighed by a state inspector and when exported shall, if requested, be reinspected and graded in like manner and a certificate of grade issued, a reasonable fee to be charged for such reinspection, said fee to be fixed by the commission. All other grain and hay received in carload lots, or when shipped by water in lots containing more than thirty tons of grain or twelve tons of hay at inspection points, not unloaded at a terminal warehouse, shall be weighed, inspected and graded, unless the bill of lading contains a notation, "Not subject to inspection or terminal weight or grade." *Id.* Tit. 211, Sec. 17.

Warehouse license:—Any person, firm, company, corporation or association of persons owning or operating any public or terminal warehouse or warehouses in this state shall, on or before June 30th of each year, procure from the commission a license for each warehouse so owned or operated for the ensuing year before transacting business at such public warehouse or warehouses. Such license shall be posted in a conspicuous place in the office of each warehouse. The fee for such license shall be one dollar for each public warehouse, and the commission

may revoke any such license for cause, upon notice and hearing. Any person, corporation or association operating any public or terminal warehouse in this state without a license shall forfeit to the state for each day's operation fifty dollars, and such operation may be enjoined upon complaint of the commission. *Id.* Tit. 211, Sec. 18.

Posting rates:—Every such warehouseman shall annually, during the first week in July, publish, by posting in a conspicuous place in his warehouse, a schedule of storage rates for the ensuing year, which schedule shall be kept posted in a conspicuous place in said warehouse, and said rates shall not be increased during such year, and no discrimination in rates shall be made by any such warehouseman. *Id.* Tit. 211, Sec. 19.

Owner may examine:—Every person having an interest in any grain or hay stored in any such warehouse, and every state grain inspector, shall have the right to examine at all times during ordinary business hours any grain or hay so stored, and all parts of such warehouse; and every warehouseman, his agents and servants, shall furnish proper facilities for such examination. *Id.* Tit. 211, Sec. 20.

Discrimination:—If any public or termial warehouseman subject to the provisions of this act shall, directly or indirectly, by any special charge, rebate, draw back or other device, demand, collect or receive from any person or persons a greater or lesser compensation for any services rendered or to be rendered in the handling or storage of grain or hay than he demands, collects or receives from any other person or persons for doing for him or for them a like and contemporaneous service in the handling or storage of grain or hay under substantially similar circumstances or conditions, or if any such public or terminal warehouseman shall make or give any undue or unreasonable preference or advantage to any person, company, firm or corporation in any respect whatsoever, or shall subject any particular person, company, firm or corporation to any undue or unreasonable prejudice or disadvantage in any respect whatsoever, such warehouseman shall be subject to a penalty as hereinafter provided. *Id.* Tit. 211, Sec. 21.

Receipt—Failure to issue:—Every public warehouseman shall receive for storage and shipment, so far as the capacity

of his warehouse will permit, all grain and hay in a warehouse used for this purpose, in suitable condition for storage, tendered him in the usual course of business, without discrimination of any kind. A warehouse receipt, in form prescribed by the commission, consecutively numbered, shall be issued and delivered to the owner or his representative immediately upon receipt of each load or parcel of grain or hay, or as he may demand, giving the true and correct grade and weight thereof: *Provided*, That upon request of the owner, grain or hay may be put in a special pile without grading, and if grain or hay has been wet or damaged it shall be received and piled in a special pile, marked with a distinguishing mark, which shall be shown on the receipt for the same, and given for the number of sacks only, or bales. The failure to issue, when requested, said receipt, or some slip, memoranda or other form of receipt shall be subject to a penalty as hereinafter provided. *Id.* Tit. 211, Sec. 22.

Delivery on payment of charges:—Upon the return of the receipt to the proper warehouseman, properly indorsed, and upon payment or tender of all advances and legal charges, grain or hay of the grade and quantity named therein shall be delivered to the holder of such receipt within forty-eight hours after the facilities for receiving the same have been provided. If such warehouseman shall fail so to deliver it, he shall be liable to the owner in damages at the rate of one cent a bushel for each day's delay, unless he shall deliver the property to the several owners in the order of demand as rapidly as it can be done by ordinary diligence. If, upon such demand and tender, the warehouseman shall fail so to deliver such grain or hay, the person entitled thereto may recover the same by action; and such warehouseman or person or agent in charge thereof shall be subject to a penalty as hereinafter provided. *Id.* Tit. 211, Sec. 23.

Annual report—Inspection:—On June 30th of each year every warehouseman shall make report under oath to the commission, on blanks or forms prepared by it, showing the total number of sacks and weight of each kind of grain, and bales and weight of hay, received and shipped from each warehouse licensed under this act, and also the amount of outstanding storage receipts on said date, and a statement of the amount of grain and hay on hand to cover the same. The commission may

also require special reports from such warehouseman at such times as the commission may deem expedient. The commission may cause every such warehouse and business thereof and the mode of conducting the same to be inspected by one or more of its members, or by its authorized agent, whenever deemed proper, and the property, books, records, accounts, papers and proceedings of every such warehouseman shall at all times during business hours be subject to such inspection. Each person, firm, corporation or association of persons operating any public warehouse or warehouses subject to the provisions of this act shall, on or before the first day of July of each year, give a bond in good and sufficient surety to the State of Washington, in such sum as the commission may require, to be approved by such commission and the attorney general, conditioned upon the faithful performance of the acts and duties enjoined upon them by law. *Id.* Tit. 211, Sec. 24.

Railroad facilities:—Whenever required by the commission every railroad company shall construct and maintain at each station and siding in this state suitable facilities for the purpose of loading bulk grain direct from wagons into cars for shipment. The commission may require an increase in such facilities whenever it deems it necessary for the purpose of loading. *Id.* Tit. 211, Sec. 25.

Inspection on call:—In case grain or hay is sold for delivery on Washington grade, to be shipped from places not provided with state inspection under this act, the buyer, seller or persons making the delivery may have it inspected out by notifying the chief inspector or a chief deputy, whose duty it shall be to have such grain inspected and, after it is inspected, to issue to the buyer, seller or person delivering it, on request, an inspector's certificate showing the grade of such grain. The person or persons calling for such inspection shall pay for such inspection a reasonable fee, to be fixed by the commission. *Id.* Tit. 211, Sec. 26.

Samples:—It shall be the duty of the chief inspector to transmit samples of grain showing the standards thereof adopted to such foreign chambers of commerce, boards of trade, exporters and persons, firms, corporations or associations handling and dealing in Washington grain as the commission may designate, and upon request he shall furnish such samples to similar parties

in this state or the United States under such reasonable rules and regulations as the commission may prescribe. *Id.* Tit. 211, Sec. 27.

Cars to be sealed:—The chief inspector or any deputy inspector, sampler or weigher serving under him, before opening the doors of any car containing grain or hay upon arrival at any of the places designated herein for inspection, shall first ascertain the condition of such cars and determine whether any leakages have occurred while said cars were in transit, whether or not the doors were properly secured and sealed at point of shipment, and shall make a record of such facts in all cases, giving seal and plug numbers. After such examinations have been made and recorded, and the inspection of such grain or hay has been made, the said officials shall securely close and reseal such doors as have been opened by them, using the special seal of the said state grain inspection department for the purpose. A record of all original seals broken by said officials, and the date when broken, and also a record of all state seals substituted therefor, and the date and number of said seals, shall be made by said officials. The chief inspector, his deputies, weighers or samplers shall break the seal, weigh and superintend the unloading of all cars of grain or hay subject to inspection, and any other person or persons breaking the seal or weighing such cars of grain or hay shall be guilty of a misdemeanor. *Id.* Tit. 211, Sec. 28.

Facilities for weighing and inspection—Scale test:—Any railroad delivering grain or hay in cars at any of the places provided with state inspection under this act shall provide convenient and suitable sidetracks at such places as the commission may designate, on which all cars of grain or hay delivered by them shall, upon arrival, be set and arranged convenient for inspection, and after inspection such railroad company shall promptly distribute all such cars of grain and hay, and set them at the proper place or places to be unloaded as designated by the consignor or consignee. Such railroad company shall provide at such place or places as the commission may designate suitable track scales for weighing cars of grain or hay. Such scales shall be under the control of the chief inspector and his deputies. It shall be the duty of the chief inspector or his deputies to require the railroad company to correct all scales so provided as often as may be necessary to insure the correct weighing of

grain or hay. Whenever scales have been installed by any railroad company as above provided, it shall be the duty of the chief inspector or his deputies to use such scales in weighing all grain or hay received over the line of such railway: *Provided*, That if any terminal warehouse in inspection cities are provided with proper scales and weighing facilities, the chief inspector or his deputies may weigh the grain upon the scales so provided. The chief inspector or one of his deputies shall, at least once each year, examine, test and require to be corrected all scales used in weighing grain or hay in any of the cities designated as inspection points in this act, or such places as may be hereafter designated, and after such scale is tested, if found to be correct and in good condition, to seal the weights with a seal provided for that purpose and issue to the owner or proprietor a certificate authorizing the use of such scales for weighing grain or hay for the ensuing year, unless sooner revoked by the chief inspector or his deputy. If such scales be found to be inaccurate or unfit for use, the chief inspector or his deputy shall notify the party operating or using them, and the party thus notified shall, at his own expense, thoroughly repair the same before attempting to use them, and until thus repaired to the satisfaction of the inspector or his deputy, the certificate of such party shall be suspended or revoked, in the discretion of the inspector or his deputy. The party receiving such certificate shall pay to the chief inspector or his deputy a reasonable fee for such inspection and certificate, to be fixed by the commission, which sum shall be paid into the state treasury. It shall be the duty of the said commission to see that the provisions of this section are strictly enforced. *Id.* Tit. 211, Sec. 29.

Police protection:—All railroad companies and warehousemen operating in the cities provided for inspection by this act shall furnish ample and sufficient police protection at all their several terminal yards and terminal tracks to securely protect all cars containing grain or hay while the same are in their possession. They shall prohibit and restrain all unauthorized persons, whether under the guise of sweepers or under any other pretext whatever, from entering or loitering in or about their railroad yards or track and from entering any car of grain or hay under their control, or removing hay or grain therefrom, and shall employ and detail such number of watchmen as may

be necessary for the purpose of carrying out the provisions of this section. *Id.* Tit. 211, Sec. 30.

Penalties:—Any railroad company or common carrier, or other corporation, and any warehouseman, which shall violate or fail to comply with any provision of this act, or which fails, omits or neglects to obey, observe or comply with any order, rule, or any direction, demand or requirement of the commission made under the provisions of this act, shall be subject to a penalty of not to exceed the sum of one thonsand dollars for each and every offense, and every such violation shall be a separate and distinct offense, and in case of a continuing violation, every day's continuance thereof shall be and be deemed to be a separate and distinct offense.

Every officer, agent or employee of any railroad company or common carrier, or other corporation, or any warehouseman which shall violate or fail to comply with, or who procures, aids or abets any violation by any such railroad company or common carrier, or other corporation or warehouseman, of any provision of this act, or who shall fail to obey, observe or comply with any order of the commission, or any provision of any order of the commission; or who procures, aids or abets any such railroad company or common carrier, or other corporation, or any warehouseman, in its failure to obey, observe and comply with any such order or provision, shall be guilty of a gross misdemeanor. *Id.* Tit. 211, Sec. 31.

Every person either individually or acting as an official or agent of any corporation other than a railroad company, common carrier or warehouseman, who shall violate any provision of this act, or fail to observe or comply with any order made by the commission under this act, so long as the same shall be or remain in force; or shall procure, aid or abet any such corporation in its violation of this act, or in its failure to obey, observe, or comply with any such order, shall be guilty of a gross misdemeanor. Sec. 31.

Part of act valid:—If any section or part of a section of this act shall be for any cause held to be unconstitutional, such fact shall not affect the remainder of this act. *Id.* Tit. 211, Sec. 32.

Receipts to be anticipated:—That the state auditor may, at the beginning of any biennial period, anticipate the receipts and

issue warrants to cover the same to any amount not exceeding $10,000 dollars. *Id.* Tit. 211, Sec. 33.

Warehousemen shall receipt for goods:—That it shall be the duty of every person keeping, controlling, managing or operating, as owner or agent or superintendent of any company or corporation, any warehouse, commission house, forwarding house, mill, wharf or other place where grain, flour, pork, beef, wool or other produce or commodity is stored, to deliver to the owner of such grain, flour, pork, beef, wool, or other produce or commodity, a warehouse receipt therefor, bearing the full name of those operating said houses, which receipt shall bear the date of its issuance, and shall state from whom received, the number of sacks, if sacked, the number of bushels or pounds, the condition or quality of the same, and the terms and condition upon which it is stored. *Id. Tit.* 521, Sec. 1.

Goods must be actually stored:—No person shall issue any receipt or other voucher, as provided for in section 1 of this act, for any grain, flour, wool, pork, beef or other produce or commodity not actually in store at the time of issuing such receipt, or issue any receipt in any respect fraudulent in its character, either as to its date or the quantity, quality or grade of such property, or duplicate or issue a second receipt for the same, while any former receipt is outstanding for the same property, or any part thereof, without writing across the face thereof the word duplicate. *Id.* Tit. 521, Sec. 2.

Preserving identity of property:—No person operating any warehouse, commission house, forwarding house, mill, wharf or other place where grain, flour, beef, pork, wool or other produce or commodity is stored shall mix any grain, flour, beef, pork, wool or other produce or commodity of different grades together, or deliver one grade for another, or in any way tamper with the same while in his possession or custody, with a view of securing any profit to himself or any other person, and in no case mix different grades together while in store: *Provided*, That nothing in this act shall be construed to prohibit any person operating any warehouse, commission house, forwarding house, mill, wharf or other place where grain, pork, wool or other produce or commodity is stored from keeping, piling or storing any produce or commodity offered for storage separate and apart from other

produce or commodity, by marking such produce or commodity in such a manner that it can be identified and delivered on presentation of the warehouse receipt or voucher which was given for same; in which case the receipt given shall designate the mark on the produce or commodity so stored. *Id.* Tit. 521, Sec. 3.

Goods removed only on written order of owner:—No person operating any warehouse, commission house, forwarding house, mill, wharf or other place of storage shall sell, incumber, ship, transfer, or in any manner remove or permit to be shipped, transferred or removed from the place of storage at which the receipt is given, any grain, flour, beef, pork, wool or other produce or commodity for which a receipt has been given by him as aforesaid, whether received for storing, shipping, grinding or manufacturing or other purposes, without the written consent of the holder of the receipt. *Id.* Tit. 521, Sec. 4.

Checks and receipts negotiable:—That all checks or receipts given by any person operating any warehouse, commission house, forwarding house, wharf or other place of storage for any grain, flour, pork, beef, wool or other produce or commodity, stored or deposited, and all bills of lading, and transportation receipts of every kind, are hereby declared negotiable, and may be transferred by indorsement of the party to whose order such check or receipt was given or issued, and such indorsement shall be deemed a valid transfer of the commodity represented by such receipt, and may be made either in blank or to the order of another. *Id.* Tit. 521, Sec. 5.

Delivery of goods:—That on the presentation of the receipt given by any person operating any warehouse, commission house, forwarding house, mill, wharf or other place of storage, for any grain, flour, beef, wool, pork or other produce or commodity, and on payment of all the charges due thereon, the owner shall be entitled to the immediate possession of the commodity named in such receipt, and it shall be the duty of such warehouseman, wharfinger, mill man or other person having the possession thereof to deliver such commodity to the owner of such receipt without further expense to such owner, and without unnecessary delay. *Id.* Tit. 521, Sec. 6.

Violation of act—Penalty:—That any person who shall violate any of the provisions of this act shall be liable to indictment and, upon conviction, shall be fined in any sum not exceeding five thousand dollars, or imprisonment in the penitentiary of this state not exceeding five years, or both; and in case of a corporation, the person acting for said corporation shall be liable for a like punishment, upon indictment and conviction. And all and every person or persons aggrieved by a violation of this act may have and maintain an action at law against the person or persons, corporation or corporations violating any of the provisions of this act, to recover all damages, immediate or consequential, which he or they may have sustained by reason of such violation, before any court of competent jurisdiction, whether such person shall have been convicted under this act or not. *Id.* Tit. 521, Sec. 7.

Form of receipt:—The receipt required in section 1 of this act shall be in form as follows:

(Name of firm or company.)

No..... (Place and date.)

Received in store from (name of consignor), (quantity), gross, lbs., tare, ... lbs., net, ... lbs. No..... (give here grade and name of commodity) at owner's risk of unavoidable damage, to be delivered at this warehouse upon return of this receipt, properly endorsed, and payment of charges. This receipt negotiable when duly endorsed by consignor. Storage to (here give amount and date).

Signed (Name of firm or company.)

Id. Tit. 521, Sec. 8. (Name of Agent) Agent.

Bailee to keep record:—Whenever any personal property shall be consigned to or deposited with any forwarding merchant, wharf, warehouse, or tavern keeper, or the keeper of any depot for the reception and storage of trunks, baggage, merchandise or other personal property, such consignee or bailee shall immediately cause to be entered, in a book kept by him, a description of such property, with the date of reception thereof. *Id.* Tit. 317, Sec. 1.

Fraud in warehouse receipts:—That it shall be unlawful for any person, firm, association or corporation to make, utter, circulate, sell or offer for sale any certificate of any warehouse,

distillery or depositary for intoxicating liquors, unless the identical liquor mentioned in such certificate is in the possession of the warehouse, distillery or depositary mentioned in such certificate fully paid for, so that the owners and holder of such certificate will be entitled to obtain such intoxicating liquors without the payment of any additional sum except the taxe of the government and the tax of the state, county and city in which such warehouse, distillery or depositary may be located, and any storage charges. *Id.* Tit. 267, Sec. 111.

Penalty:—Any person violating any of the provisions of this act shall, upon conviction thereof, be punished by imprisonment in the penitentiary for not more than five years nor less than one year, or imprisonment in the county jail for any length of time not exceeding one year. *Id.* Tit. 267, Sec. 113.

DECISIONS AFFECTING WAREHOUSEMEN

B.

Delivery to bailee—Insufficient evidence of:—An action for value of trunk and contents. Evidence showed that witness twice telephoned the transfer company and told them to send for trunk. The day of the second message some one called for and took the trunk away. No receipt was ever given for the trunk, and defendant denied receiving it. Evidence held insufficient to sustain verdict for plaintiff. *Young* v. *Seattle Transfer Co.*, 33 Wash. 225.

Bailment—Contract for, may be oral:—There is no prohibition against an oral contract of storage between warehousemen and others upon such terms and conditions as they may choose to make. *Windell* v. *Readman Warehouse Co.*, 30 Wash. 469, 476.

Same—Bailee may exempt himself from liability by contract:—A bailee may, by contract, exempt himself from liability except for his own fraud or negligence. *Patterson* v. *Wenatchee Canning Co.*, 110 Pac. 379.

Warehouseman—When business held to be that of common carrier:—The defendant's business was that of soliciting goods from different persons having less than car load lots for shipment and to receive and hold such lots at his warehouse until

a car load destined to a common point had been assembled. The goods were then shipped. No charge for storage was made, defendant receiving its compensation by the difference in the price charged its customers and the rate for car load lots as charged by the railroad company. While in defendant's warehouse plaintiff's goods were destroyed by fire. *Held,* that defendant was a common carrier, and liable for the value of the goods, less the reasonable value of defendant's services for cartage and packing. *Kettenhofen* v. *Globe Transfer and Storage Co.*, 127 Pac. 295.

Same—Court to determine whether relation, that of bailor and bailee or landlord and tenant:—Under a written agreement, a cold storage room was to be used exclusively by plaintiff for the storage of meat. It was *held* error to leave to the jury the determination of the question whether the relation existing between the parties was that of bailor and bailee, or of landlord and tenant, as this was clearly a question of law for determination by the court. *Patterson* v. *Wenatchee Canning Co.*, 53 Wash. 155.

Wharfinger's liability:—A wharfinger for hire allowed goods of his customer to be placed upon his wharf, which was in a rotted condition, resulting in the loss of the goods. It was *held* wharfinger was liable for value of the goods at time of their loss. *Oregon Imp. Co.* v. *Seattle Gas Co.*, 4 Wash. 634.

C.

Safe deposit boxes—Control of contents by safe deposit company—Garnishment:—Under the laws of this state a safe deposit company is subject to the writ of garnishment in respect of the contents of boxes which it rents to its customers. After the service of the writ it is the duty of the garnishee to retain exclusive control of the box until discharged by the court. *Trowbridge* v. *Spinning*, 23 Wash. 48, 69.

H.

Storage charges—Verbal statement of amount due does not preclude additional proper charges:—Goods were shipped to and stored by warehouseman, who paid freight charges. Plaintiff called and, upon being informed that charges were $151.95, paid all except $1.95. A few days later he called and requested goods to be carted to his home, at which time he was told that

price would not be over $25. Upon delivery of goods a bill showing a balance of $40.50 was presented, which he refused to pay, and warehouseman retained a piano as security. No attempt was made to show that the charges were unreasonable; that the services had not been rendered, nor that the advance charges had not been paid. In reversing a judgment for plaintiff, court said that, being a warehouseman, appellant had a lien upon the goods until proper storage charges were paid, and that the former statement of the warehouseman did not preclude additional proper charges. *George* v. *Bekins, etc., Co.*, 53 Wash. 430.

K.

Carrier—May sell to satisfy lien and pay surplus to county treasurer:—Certain property was in the warehouse of a carrier, who had a lien upon it for its charges. An attempt was made to seize the property to satisfy a judgment against the owner. The carrier refused to surrender the property and afterward sold the same to satisfy its lien and it then paid the surplus to the county treasurer. Evidence considered and judgment for defendant affirmed. *Koyukuk Mining Co.* v. *Van De Vanter*, 30 Wash. 385.

Pledge—Stolen property—Instruction to jury:—Where goods are stolen and pledged with a pawnbroker, the defendant is not entitled to instructions on the theory that he had a right to rely on the apparent title of the pledgor. *Rumpf* v. *Barto et al.*, 10 Wash. 382.

N.

Collapse of warehouse—Negligence presumed:—Defendant stored a quantity of oats for plaintiff in its warehouse on a wharf. A portion of the wharf collapsed and the oats were lost. *Held:* The negligence of a warehouseman will be presumed where the goods are destroyed by collapse, from no external violence, of the building in which they are stored. Judgment for plaintiff affirmed. *Foster* v. *Pacific Clipper Line*, 30 Wash. 515.

Injury in cold storage—Odors—Warehouseman liable:—Defendant, a cold storage company, received from agent of plaintiff a quantity of meat for storage, all of which was in good condition except one piece which, there was evidence to show, had an odor of iodoform. In an action for damage to the meat for

being rendered unmarketable because of odor of fish and iodoform, a judgment against the defendant company was sustained. It was *held* to be for jury to determine whether or not, in storing the meats together, defendant had exercised such care as the contract contemplated and whether or not the lack of such care was the proximate cause of the damage. *Smith* v. *Diamond Ice & Storage Co.*, 118 Pac. 646, 647.

Same—Where owner has control of premises—Negligence on owner's part:—Contracts, pleadings and evidence considered, and *held*, where plaintiff had control of the premises, rented to him by defendant warehouseman, that if loss occurred from plaintiff's failure to use ordinary care in handling or inspecting the meat or in directing the refrigeration of the room, if these duties were put upon him by the contract he cannot recover. He cannot recover if the loss occurred through his own fault or negligence. *Patterson* v. *Wenatchee Canning Co.*, 110 Pac. 379.

Same—Rule stated, exceptions:—Where merchandise, not perishable in its nature, is delivered to a bailee for hire in good condition, and a redelivery is not made, or upon a redelivery the goods are found damaged, a *prima facie* case of negligence is made out; yet the subject of the bailment must be of such a nature that loss or injury could not ordinarily have occurred without negligence on the part of the bailee. The chattel should be such that it would not deteriorate or perish from internal defects, or through the operation of natural causes; or the defect be not the result of ordinary wear and tear. When a situation is shown which could not have been produced except by the operation of abnormal causes, the *onus* rests upon the bailee to show that the injury was caused without his fault. *Held*, though the meat was in first class condition when brought into defendant's warehouse, that the loss and damage might have occurred to some extent without negligence on part of bailee, and jury should have been given instructions accordingly. *Patterson* v. *Wenatchee Canning Co.*, 53 Wash. 155, 158; 101 Pac. 721.

Delivery—Warehouseman's duty:—The duty of a warehouseman to turn out wheat is performed when he delivers the specific article on the cars, or, if the receipt be in such form, wheat of

like kind and quality. *Union Elevator & Warehouse Co.* v. *Farmers' Warehouse,* 125 Pac. 960.

O.

Measure of damages:—Measure of damages is the fair market value at the date the meat was sold and not at the time when plaintiff intended to sell it. Defendant's liability could not be extended beyond the termination of the bailment. *Patterson* v. *Wenatchee Canning Co.,* 53 Wash. 155, 159; 101 Pac. 721.

Q.

Warehouse receipt:—A mere receipt signed by a mill owner as "warehouseman" does not make it warehouseman's receipt. *Steaubli* v. *Blaine Nat. Bank,* 11 Wash. 426.

Same—Printed limitation of value—Warehousemen not protected—When:—Plaintiff delivered to defendant box of household goods plainly marked on outside, "P. Gannon, Storage. This side up. Glass. Value $500," and received receipt containing, among other conditions, one printed in very fine type limiting liability for loss or damage to $25 "unless the true value is herein stated." Box was lost and plaintiff recovered verdict for $340. *Held,* that plaintiff had done his duty and had complied in spirit with the provisions of receipt, and that it was the duty of the defendant to have incorporated the value mentioned in the receipt. *Gannon* v. *Seehorn,* 86 Pac. 1116.

Same—The real contract, though oral, and not the unassented to conditions of a warehouse receipt subsequently delivered, are binding:—Defendant entered into oral contract with plaintiff to store plaintiff's goods. A few days later defendant mailed to plaintiff a warehouse receipt, signed by defendant only, containing other and different conditions than those of the oral contract. Plaintiff kept the receipt and did not notice the different conditions. *Held,* that parol evidence was admissible to show what was the real contract, and a verdict for plaintiff affirmed. *Windell* v. *Readman Warehouse Co.,* 30 Wash. 469.

Same—Pleading:—Under the reformed procedure in pleading, a complaint states a cause of action against a warehouseman by alleging that the wheat was stored and after such storage was sold to plaintiff; that demand had been made for same, and

the return of the receipt proffered, together with storage charges due; that plaintiff was owner of the wheat and the failure of the warehouseman to deliver said wheat or any part thereof, or to pay plaintiff the value of the same rendered him liable. *Bank* v. *Young*, 20 Wash. 337.

Same—When informal receipt is sufficient—Duty of warehouseman:—A memorandum receipt, not in statutory form, which had been transferred with a sale of the wheat described therein, held sufficient upon which to maintain an action. The warehousemen were bailees for hire, and it was their duty to deliver the property to the owner, whoever he may be, after the rightful charges had been paid. *Bank* v. *Young*, 20 Wash. 337.

Same — Negotiability:— Warehouse receipts made negotiable by statute only pass by indorsement the interest which the holder has in and to the property represented by the receipt. *Yarwood* v. *Happy*, 18 Wash. 246.

Same—Negotiated by pledgee—Effect:—Where one holding a warehouse receipt as security for a loan, and in violation of the terms of the agreement, transfers it to a third party as security, *held* that original pledgor could recover the receipt from the third party. *Id.*

CHAPTER XLVIII

WEST VIRGINIA.

LAWS PERTAINING TO WAREHOUSEMEN

NOTE:—It seems there are in West Virginia no laws pertaining to warehousemen as such.

DECISIONS AFFECTING WAREHOUSEMEN

A.

Bailment—Bailee cannot dispute bailor's title—Exceptions to the rule:—The general doctrine is well established that, in ordinary cases, the bailee cannot dispute his bailor's title any more than a tenant can his landlord's. But the general rule has numerous exceptions, in which he will be permitted to do so; as in a case where it can be shown that the latter fraudulently obtained possession of the goods, or that they have been recovered from the former by suit or paramount title; or he has been notified by the true owner, before the suit was instituted by the bailor, not to deliver to his bailor, and like instances. *Kelly* v. *Patchell*, 5 W. Va. 585.

Same—Jurisdiction of equity:—In a sense a bailment is a trust, but not such as is cognizable in equity; it is a subject of common law jurisdiction. Where, therefore, a bill in equity was filed against one who had offered to gratuitously retain the property in his possession for the complainant, it appearing that the complainant charged the defendant with wrongful conversion of the property, the decree of the court dismissing the bill was affirmed on appeal. *Thompson et al.* v. *Whitaker Iron Co. et al.*, 41 W. Va. 574.

Same—Statute of limitations—Demand must be made within reasonable time:—While it is true that demand must be made before action brought for an alleged conversion, it is also true that the time within which such demand must be made cannot

be indefinitely prolonged. A creditor cannot keep his debtor in debt indefinitely. What is a reasonably time is not settled by any precise rule; it would seem reasonable to require that demand should be made within the time limited by the statute for bringing the action. The same reason exists for hastening the demand as for hastening the commencement of action. *Id.*

Same—Whether an action be ex contractu or ex delicto still one of contract:—In general it is optional with the plaintiff to declare against a bailee in form *ex contractu* for the breach of the express contract entered into by him or on the promise implied from the act of bailment; or, in tort for the breach of the duty, which is by law impliedly cast on the bailee; but it seems, that in whatever form he may frame his declaration, the action is still one of contract. *Coal Co.* v. *Richter*, 31 W. Va. 858; *Maloney* v. *Barr*, 27 W. Va. 381.

M.

Pledge—A bailment—Definition:—A pledge may be defined to be a bailment of goods by a debtor to his creditor, to be kept by him until the debt is discharged. *First National Bank* v. *Harkness et al.*, 42 W. Va. 156.

N.

Loss by fire—Express company not liable, when:—Goods sent by express to consignee were received late Saturday afternoon. Contrary to custom, the express company did not mail to consignee a notice of their arrival, and consignee learning of their arrival through other sources on Monday night, called on Tuesday for the goods. Meanwhile the freight room where the goods had been placed, had been forcibly entered and the goods stolen. Held that the express company's duty as carrier had ended, that the failure to notify consignee was not the proximate cause of the loss, and that the express company was not liable for their value. *Hutchinson* v. *U. S. Express Company*, 59 S. E. 949.

R.

Bills of lading—Effect of transfer—As collateral:—The transfer of a bill of lading is equivalent to the transfer of the property itself. Where a bill is transferred or delivered as collateral security, the rights of the pledgee thereunder are the same as those of an actual purchaser of the goods represented, for value.

Neill & Ellingham v. *Rogers Bros. Produce Co.*, 41 W. Va. 37; *Dows* v. *Bank*, 91 U. S. 618.

U.

Taxation:—A warehouseman held to be a trustee within the meaning of clause d, sec. 55, chapter 35, of Act of 1905, and that he must list in the name of the owner property stored. Upon his refusal so to do the Tax Assessor may rightfully assess it in the name of the warehouseman. *Hannis Distilling Co.* v. *Berkeley County Court*, 71 S. E. 576.

CHAPTER XLIX

WISCONSIN.

LAWS PERTAINING TO WAREHOUSEMEN

NOTE:—On June 3, 1909, there was approved the following act, which took effect September 1, 1909. On account of the changes made therein in the Uniform Warehouse Receipts Act, it was deemed best to incorporate the entire act as passed by the Legislature of Wisconsin. It is chapter 291, Laws of Wisconsin, 1909, p. 308. See also Statutes of Wisconsin, 1911, Ch. 78 m, p. 1142.

AN ACT TO REPEAL SECTIONS 1747-81 TO 1747-87, INCLUSIVE, AND SECTIONS 1747-91 TO 1747-99, INCLUSIVE, OF THE STATUTES; TO AMEND SECTIONS 1675-1, 4194, 4424 AND 4425 OF THE STATUTES, AND TO CREATE SECTIONS 1684M-1 TO 1684M-66, INCLUSIVE, OF THE STATUTES, PROVIDING FOR LAWS AS TO WAREHOUSE RECEIPTS UNIFORM WITH THOSE OF OTHER STATES.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. Sections 1747-81 to 1747-87, inclusive, and sections 1747-91 to 1747-99, inclusive, of the statutes, are repealed.

SEC. 2. Sections 1675-1, 4194, 4424, and 4425 of the statutes are amended to read: Section 1675-1. An instrument to be negotiable must conform to the following requirements:

1. It must be in writing and signed by the maker or drawer.
2. Must contain an unconditional promise or order to pay a sum certain in money.
3. Must be payable on demand or at a fixed or determinable future time.
4. Must be payable to order or to bearer.
5. Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

But no order drawn upon or accepted by the treasurer of any county, town, city, village, or school district whether drawn by an officer thereof or any other person, and no obligation nor instrument made by any such corporation, or any officer thereof, unless expressly authorized by law to be made negotiable, shall be, or shall be deemed to be, negotiable according to the custom of merchants, in whatever form they may be drawn or made.

Warehouse receipts, bills of lading, and railroad receipts upon the face of which the words "not negotiable" shall not be plainly written, printed, or stamped, shall be negotiable as provided in section 1676 of the Wisconsin statutes of 1878, and in sections 4194 and 4425 of these statutes, as the same have been construed by the supreme court.

SEC. 4194. * * * Bills of lading, or railroad receipts given for any goods, wares, merchandise, lumber, timber, grain, flour, or other produce or commodity stored, shipped, or deposited with any * * * wharfinger, vessel, boat, or railroad company or other person, on the face of which

shall not be plainly written the words "not negotiable" may be transferred by delivery with or without endorsement thereof; and any person to whom the same may be so transferred shall be deemed and taken to be the owner of the goods, wares, and merchandise therein specified so far as to give validity to any pledge, lien, or transfer made or created by such person or persons; but no such property shall be delivered except on surrender and cancellation of said original receipt or bill of lading or the endorsement of such delivery thereon in case of partial delivery.

SEC. 4424. Any * * * wharfinger, master of a vessel or boat, or any officer, agent, or clerk of any railroad, express, or transportation company who shall issue any receipt, bill of lading, voucher, or other document to any person purporting to be the owner thereof, or as security for any loan or indebtedness for any goods, wares, merchandise, lumber, timber, grain, flour, or other property, produce, or commodity, unless at the time of issuing the same such property shall have been actually received or shipped according to the terms and meaning of such receipt, bill of lading, voucher, or other document so issued, or who shall sell or incumber, ship, transfer, or in any manner remove beyond his immediate control, any such property so received, contrary to the terms and meaning of such receipt, bill of lading, voucher, or other document, without the consent of the holder thereof, or who shall deliver any such property or any part thereof, except to the person holding such receipt, bill of lading, voucher, or other document, and upon the surrender and cancellation thereof, or in case of any partial delivery of such property, upon the indorsement thereon of such partial delivery, unless required by legal process, or shall issue any second or duplicate receipt or bill of lading, for any such property, while any former receipt or bill of lading for any such property or any part thereof shall be outstanding and uncancelled, without writing across the face thereof the word "duplicate," shall be punished by imprisonment in the state prison not more than three years nor less than one year, or by imprisonment in the county jail not more than one year or by fine not exceeding one thousand dollars.

SEC. 4425. Any such receipt, bill of lading, voucher, or other document as is mentioned in the preceding section shall be transferable by delivery thereof without endorsement or assignment, and any person to whom the same is so transferred shall be deemed and taken to be the owner of the property therein specified so far as to give validity to any pledge, lien, or transfer made or created by such person unless such receipt, bill of lading, voucher, or other document shall have the words "not negotiable" plainly written or stamped on the face thereof. * * *

SEC. 3. There are added to the statutes sixty-six new sections to read: Section 1684m-1. Warehouse receipts may be issued by any warehouseman.

SEC. 1684m-2. 1. Warehouse receipt need not be in any particular form, but every such receipt must embody within its written or printed terms:

(1) The location of the warehouse where the goods are stored.

(2) The date of issue of the receipt.

(3) The consecutive number of the receipt.

(4) A statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order.

(5) The rate of storage charges.

(6) A description of the goods or of the packages containing them.

(7) The signature of the warehouseman, which may be made by his authorized agent.

(8) If the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership, and

(9) A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien. If the precise amount

of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

2. A warhouseman shall be liable to any person injured thereby, for all damage caused by the omission from a negotiable receipt of any of the terms herein required.

Sec. 1684m-3. Every warehouseman shall keep in the office in which the business of the warehouse is transacted a register in which shall be entered all the facts with reference to each receipt issued, as required by section 1684m-2. When the warehouseman shall cease to be responsible for the delivery of the property described in the receipt, the fact and date of the delivery of the property and such other facts as may terminate liability on such receipt, shall be entered on such register in connection with the original entry of such receipt. Such register shall be open to the inspection of the owner or holder of any such receipt, or of any person who shall present the same at the office of the warehouseman. The warehouseman shall be responsible to any person relying on such entries in good faith for any loss or damage which he may sustain through any failure to make the entries herein required.

Sec. 1684m-4. A warehouseman may insert in a receipt, issued by him, any other terms and conditions, provided that such terms and conditions shall not

(1) Be contrary to the provisions of this act.

(2) In any wise impair his obligation to exercise that degree of care in the safe-keeping of the goods entrusted to him which a reasonably careful man would exercise in regard to similar goods of his own.

Sec. 1684m-5. A receipt in which it is stated that the goods received will be delivered to the depositor, or to any other specified person, is a non-negotiable receipt.

Sec. 1684m-6. A receipt in which it is stated that the goods received will be delivered to the bearer, or to the order of any person named in such receipt is a negotiable receipt. No provision shall be inserted in a negotiable receipt that it is non-negotiable. Such provision, if inserted, shall be void.

Sec. 1684m-7. When more than one negotiable receipt is issued for the same goods, the word "duplicate" shall be plainly placed upon the face of every such receipt, except the one first issued. A warehouseman shall be liable for all damage caused by his failure so to do to any one who purchased the subsequent receipt for value supposing it to be an original, even though the purchase be after the delivery of the goods by the warehouseman to the holder of the original receipt.

Sec. 1684m-8. A non-negotiable receipt shall have plainly placed upon its face by the warehouseman issuing it "Non-negotiable" or "Not negotiable." In case of the warehouseman's failure so to do, a holder of the receipt who purchased it for value supposing it to be negotiable, may, at his option, treat such receipt as imposing upon the warehouseman the same liabilities he would have incurred had the receipt been negotiable. This section shall not apply, however, to letters, memoranda, or written acknowledgments of an informal character.

Sec. 1684m-9. 1. A warehouseman, in the absence of some lawful excuse provided by this act, is bound to deliver the goods upon a demand made either by the holder of a receipt for the goods or by the depositor, if such demand is accompanied with

(1) An offer to satisfy the warehouseman's lien.

(2) An offer to surrender the receipt if negotiable, with such indorsements as would be necessary for the negotiation of the receipts, and

(3) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the warehouseman.

2. In case the warehouseman refuses or fails to deliver the goods in compliance with a demand by the holder or depositor so accompanied, the burden shall be upon the warehouseman to establish the existence of a lawful excuse for such refusal.

SEC. 1684m-10. A warehouseman is justified in delivering the goods, subject to the provisions of the three following sections, to one who is

(1) The person lawfully entitled to the possession of the goods, or his agent.

(2) A person who is either himself entitled to delivery by the terms of a non-negotiable receipt issued for the goods, or who has written authority from the person so entitled either indorsed upon the receipt or written upon another paper, or

(3) A person in possession of a negotiable receipt by the terms of which the goods are deliverable to him or order or to bearer, or which has been indorsed to him or in blank by the person to whom delivery was promised by the terms of the receipt or by his mediate or immediate indorsee.

SEC. 1684m-11. Where a warehouseman delivers the goods to one who is not in fact lawfully entitled to the possession of them, the warehouseman shall be liable as for conversion to all having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by subdivisions (2) and (3) of the preceding section and though he delivered the goods as authorized by said subdivisions he shall be so liable, if prior to such delivery he had either

(1) Been requested, by or on behalf of the person lawfully entitled to a right of property or possession in the goods, not to make such delivery, or

(2) Had information that the delivery about to be made was to one not lawfully entitled to the possession of the goods.

SEC. 1684m-12. Except as provided in section 1684m-37, where a warehouseman delivers goods for which he had issued a negotiable receipt, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the receipt, he shall be liable to any one who purchases for value in good faith such receipt, for failure to deliver the goods to him, whether such purchaser acquired title to the receipt before or after the delivery of the goods by the warehouseman.

SEC. 1684m-13 Except as provided in section 1684m-37, where a warehouseman delivers part of the goods for which he had issued a negotiable receipt and fails either to take up and cancel such receipt, or to place plainly upon it a statement of what goods or packages have been delivered, he shall be liable to any one who purchases for value in good faith such receipt, for failure to deliver all the goods specified in the receipt, whether such purchaser acquired title to the receipt before or after the delivery of any portion of the goods by the warehouseman.

SEC. 1684m-14. 1. The alteration of a receipt shall not excuse the warehouseman who issued it from any liability if such alteration was

(1) Immaterial,

(2) Authorized, or

(3) Made without fraudulent intent.

2. If the alteration was authorized, the warehouseman shall be liable according to the terms of the receipt as altered. If the alteration was unauthorized, but made without fraudulent intent, the warehouseman shall be liable according to the terms of the receipt, as they were before alteration.

3. Material and fraudulent alteration of a receipt shall not excuse the warehouseman who issued it from liability to deliver, according to the terms of the receipt as originally issued, the goods for which it was issued, but shall excuse him from any other liability to the person who made the alteration and to any person who took with notice of the alteration. Any purchaser of the receipt for value without notice of the alteration shall acquire the same rights against the warehouseman which such purchaser would have acquired if the receipt had not been altered at the time of the purchase.

SEC. 1684m-15. 1. Where a negotiable receipt has been lost or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient sureties to be approved by the court to protect the warehouseman from any liability or expense, which he or any person injured by such delivery may incur by reason of the original receipt remaining outstanding. The court may also in its discretion order the payment of the warehouseman's reasonable costs and counsel fees.

2. The delivery of the goods under an order of the court as provided in this section shall not relieve the warehouseman from liability to a person to whom the negotiable receipt has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods.

SEC. 1684m-16. A receipt upon the face of which the word "duplicate" is plainly placed is a representation and warranty by the warehouseman that such receipt is an accurate copy of an original receipt properly issued and uncancelled at the date of the issue of the duplicate, but shall impose upon him no other liability.

SEC. 1684m-17. No title or right to the possession of the goods, on the part of the warehouseman, unless such title or right is derived directly or indirectly from a transfer made by the depositor at the time of or subsequent to the deposit for storage, or from the warehouseman's lien, shall excuse the warehouseman from liability for refusing to deliver the goods according to the terms of the receipt.

SEC. 1684m-18. If more than one person claim the title or possession of the goods, the warehouseman may, either as a defence to an action brought against him for non-delivery of the goods, or as an original suit, whichever is appropriate, require all known claimants to interplead.

SEC. 1684m-19. If some one other than the depositor or person claiming under him has a claim to the title or possession of the goods, and the warehouseman has information of such claim, the warehouseman shall be excused from liability for refusing to deliver the goods, either to the depositor or person claiming under him or to the adverse claimant, until the warehouseman has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead.

SEC. 1684m-20. Except as provided in the two preceding sections and in sections 1684m-10 and 1684m-37, no right or title of a third person shall be a defence to an action brought by the depositor or person claiming under him against the warehouseman for failure to deliver the goods according to the terms of the receipt.

SEC. 1684m-21. A warehouseman shall be liable to the holder of a receipt for damages caused by the non-existence of the goods or by the failure of the goods to correspond with the description thereof in the receipt at the time of its issue. If, however, the goods are described in a receipt merely by a statement of marks or labels upon them, or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind, or that packages containing the goods are said

to contain goods of a certain kind, or by words of like purport, such statements, if true, shall not make liable the warehouseman issuing the receipt, although the goods are not of the kind which the marks or labels upon them indicate, or of the kind they were said to be by the depositor.

Sec. 1684m-22. A warehouseman shall be liable for any loss or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful owner of similar goods would exercise, but he shall not be liable, in the absence of an agreement to the contrary, for any loss or injury to the goods which could not have been avoided by the exercise of such care.

Sec. 1684m-23. Except as provided in the following section, a warehouseman shall keep the goods so far separate from goods of other depositors, and from other goods of the same depositor for which a separate receipt has been issued, as to permit at all times the identification and redelivery of the goods deposited.

Sec. 1684m-24. If authorized by agreement or by custom, a warehouseman may mingle fungible goods with other goods of the same kind and grade. In such case the various depositors of the mingled goods shall own the entire mass in common, and each depositor shall be entitled to such portion thereof as the amount deposited by him bears to the whole.

Sec. 1684m-25. The warehouseman shall be severally liable to each depositor for the care and redelivery of his share of such mass to the same extent and under the same circumstances as if the goods had been kept separate.

Sec. 1684m-26. Whenever the failure or neglect of any warehouseman to comply with any provision of this act shall cause loss or damage to any person, such warehouseman shall be liable to respond in damages to such person to the extent of the actual damages sustained by him on account of such failure or neglect.

Sec. 1684m-27. If goods are delivered to a warehouseman by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner, and a negotiable receipt is issued for them, they cannot thereafter, while in the possession of the warehouseman, be attached by garnishment or otherwise, or be levied upon under an execution, unless the receipt be first surrendered to the warehouseman, or its negotiation enjoined. The warehouseman shall in no case be compelled to deliver up the actual possession of the goods until the receipt is surrendered to him or impounded by the court.

Sec. 1684m-28. A creditor whose debtor is the owner of a negotiable receipt shall be entitled to such aid from courts of appropriate jurisdiction, by injunction and otherwise, in attaching such receipt or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process.

Sec. 1684m-29. Subject to the provisions of section 1684m-32, a warehouseman shall have a lien on goods deposited or on the proceeds thereof in his hands, for all lawful charges for storage and preservation of the goods; also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing, coopering, and other charges and expenses in relation to such goods; also for all reasonable charges and expenses for notice, and advertisements of sale, and for sale of the goods where default has been made in satisfying the warehouseman's lien.

Sec. 1684m-30. Subject to the provisions of section 1684m-31, a warehouseman's lien may be enforced

(1) Against all goods, whenever deposited, belonging to the person who is liable as debtor for the claims in regard to which the lien is asserted, and

(2) Against all goods belonging to others which have been deposited at any time by the person who is liable as debtor for the claims in regard to which the lien is asserted, if such person had been so entrusted with the possession of the goods that a pledge of the same by him at the time of the deposit to one who took the goods in good faith for value would have been valid.

SEC. 1684m-31. A warehouseman loses his lien upon goods

(1) By surrendering possession thereof, or

(2) By refusing to deliver the goods when a demand is made with which he is bound to comply under the provisions of this act.

SEC. 1684m-32. If a negotiable receipt is issued for goods, the warehouseman shall have no lien thereon, except for charges for storage of those goods subsequent to the date of the receipt, unless the receipt expressly enumerates other charges for which a lien is claimed. In such case there shall be a lien for the charges enumerated so far as they are within the terms of section 1684m-28, although the amount of the charges so enumerated is not stated in the receipt.

SEC. 1684m-33. A warehouseman having a lien valid against the person demanding the goods may refuse to deliver the goods to him until the lien is satisfied.

SEC. 1684m34. Whether a warehouseman has or has not a lien upon the goods, he is entitled to all remedies allowed by law to a creditor against his debtor, for the collection from the depositor of all charges and advances which the depositor has expressly or impliedly contracted with the warehouseman to pay.

SEC. 1684m35. 1. A warehouseman's lien for a claim which has become due may be satisfied as follows:

The warehouseman shall give a written notice to the person on whose account the goods are held, and to any other person known by the warehouseman to claim an interest in the goods. Such notice shall be given by delivery in person or by registered letter addressed to the last known place of business or abode of the person to be notified. The notice shall contain

(1) An itemized statement of the warehouseman's claim, showing the sum due at the time of the notice and the date or dates when it became due.

(2) A brief description of the goods against which the lien exists.

(3) A demand that the amount of the claim as stated in the notice, and of such further claim as shall accrue, shall be paid on or before a day mentioned, not less than ten days from the delivery of the notice if it is personally delivered, or from the time when the notice should reach its destination, according to the due course of post, if the notice is sent by mail, and

(4) A statement that unless the claim is paid within the time specified the goods will be advertised for sale and sold by auction at a specified time and place.

2. In accordance with the terms of a notice so given, a sale of the goods by auction may be had to satisfy any valid claim of the warehouseman for which he has a lien on the goods. The sale shall be had in the place where the lien was acquired, or, if such place is manifestly unsuitable for the purpose, at the nearest suitable place.

3. After the time for the payment of the claim specified in the notice to the depositor has elapsed, an advertisement of the sale, describing the goods to be sold, and stating the name of the owner or person on whose account the goods are held, and the time and place of the sale, shall be published once a week for two consecutive weeks in a newspaper published in the place where such sale is to be held. The sale shall not

be held less than fifteen days from the time of the first publication. If there is no newspaper published in such place, the advertisement shall be posted at least ten days before such sale in not less than six conspicuous places therein.

4. From the proceeds of such sale the warehouseman shall satisfy his lien, including the reasonable charges of notice, advertisement, and sale. The balance, if any, of such proceeds shall be held by the warehouseman, and delivered on demand to the person to whom he would have been bound to deliver or justified in delivering the goods.

5. At any time before the goods are so sold any person claiming a right of property or possession therein may pay the warehouseman the amount necessary to satisfy his lien and to pay the reasonable expenses and liabilities incurred in serving notices and advertising and preparing for the sale up to the time of such payment. The warehouseman shall deliver the goods to the person making such payment if he is a person entitled, under the provisions of this act, to the possession of the goods on payment of charges thereon. Otherwise the warehouseman shall retain possession of the goods according to the terms of the original contract of deposit.

SEC. 1684m-36. 1. If goods are of a perishable nature, or by keeping will deteriorate greatly in value, or by their odor, leakage, inflammability, or explosive nature, will be liable to injure other property, the warehouseman may give such notice to the owner, or to the person in whose name the goods are stored, as is reasonable and possible under the circumstances, to satisfy the lien upon such goods, and to remove them from the warehouse, and in the event of the failure of such person to satisfy the lien and to remove the goods within the time so specified, the warehouseman may sell the goods at public or private sale without advertising.

2. If the warehouseman, after a reasonable effort, is unable to sell such goods, he may dispose of them in any lawful manner, and shall incur no liability by reason thereof.

3. The proceeds of any sale made under the terms of this section shall be disposed of in the same way as the proceeds of sales made under the terms of the preceding section.

SEC. 1684m-37. The remedy for enforcing a lien herein provided does not preclude any other remedies allowed by law for the enforcement of a lien against personal property, nor bar the right to recover so much of the warehouseman's claim as shall not be paid by the proceeds of the sale of the property.

SEC. 1684m-38. After goods have been lawfully sold to satisfy a warehouseman's lien, or have been lawfully sold or disposed of because of their perishable or hazardous nature, the warehouseman shall not thereafter be liable for failure to deliver the goods to the depositor, or owner of the goods, or to a holder of the receipt given for the goods when they were deposited, even if such receipt be negotiable.

SEC. 1684m-39. 1. A negotiable receipt may be negotiated by delivery

(1) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the bearer, or

(2) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the receipt has indorsed it in blank or to bearer.

2. Where, by the terms of a negotiable receipt, goods are deliverable to bearer, or where a negotiable receipt has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any other specified person, and in such case the receipt shall thereafter be negotiated only by the indorsement of such indorsee.

SEC. 1684m-40. A negotiable receipt may be negotiated by the indorsement of the person to whose order the goods are, by the terms of the receipt, deliverable. Such indorsement may be in blank, to bearer, or to a specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in blank, to bearer, or to another specified person. Subsequent negotiation may be made in like manner.

SEC. 1684m-41. 1. A receipt which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee.

2. A non-negotiable receipt cannot be negotiated, and the indorsement of such a receipt gives the transferee no additional right.

SEC. 1684m-42. A negotiable receipt may be negotiated

(1) By the owner thereof, or

(2) By any person to whom the possession or custody of the receipt has been entrusted by the owner, if, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of the person to whom the possession or custody of the receipt has been entrusted, or if at the time of such entrusting the receipt is in such form that it may be negotiated by delivery.

SEC. 1684m-43. A person to whom a negotiable receipt has been duly negotiated acquires thereby

(1) Such title to the goods as the person negotiating the receipt to him had, or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the depositor or person to whose order the goods were to be delivered by the terms of the receipt had, or had ability to convey to a purchaser in good faith for value, and

(2) The direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt as fully as if the warehouseman had contracted directly with him.

SEC. 1684m-44 1. A person to whom a receipt has been transferred but not negotiated, acquires thereby, as against the transferrer, the title to the goods, subject to the terms of any agreement with the transferrer.

2. If the receipt is non-negotiable such person also acquires the right to notify the warehouseman of the transfer to him of such receipt, and thereby to acquire the direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt.

3. Prior to the notification of the warehouseman by the transferrer or transferee of a non-negotiable receipt, the title of the transferee to the goods and the right to acquire the obligation of the warehouseman may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferrer, or by a notification to the warehouseman by the transferrer or a subsequent purchaser from the transferrer of a subsequent sale of the goods by the transferrer.

SEC. 1684m-45. Where a negotiable receipt is transferred for value by delivery, and the indorsement of the transferrer is essention for negotiation, the transferee acquires a right against the transferrer to compel him to indorse the receipt, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made.

SEC. 1684m46. A person who for value negotiates or transfers a receipt by indorsement or delivery, including one who assigns for value a claim secured by a receipt, unless a contrary intention appears, warrants

(1) That the receipt is genuine.

(2) That he has a legal right to negotiate or transfer it.

(3) That he has knowledge of no fact which would impair the validity or worth of the receipt, and

(4) That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a receipt the goods represented thereby.

SEC. 1684m-47. The indorsement of a receipt shall not make the indorser liable for any failure on the part of the warehouseman or previous indorsers of the receipt to fulfill their respective obligations.

SEC. 1684m-48. A mortgagee, pledgee, or holder for security of a receipt, who in good faith demands or receives payment of the debt for which such receipt is security, whether from a party to a draft drawn for such debt or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such receipt or the quantity or quality of the goods therein described.

SEC. 1684m-49. The validity of the negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the receipt was induced by fraud, mistake, or duress to entrust the possession or custody of the receipt to such person, if the person to whom the receipt was negotiated, or a person to whom the receipt was subsequently negotiated, paid value therefor, without notice of the breach of duty, or fraud, mistake, or duress.

SEC. 1684m-50. Where a person having sold, mortgaged, or pledged goods which are in a warehouse and for which a negotiable receipt has been issued, or having sold, mortgaged, or pledged the negotiable receipt, the subsequent negotiation thereof by that person under any sale, or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, mortgage, or pledge, shall have the same effect as if the first purchaser of the goods or receipt had expressly authorized the subsequent negotiation.

SEC. 1684m-51. Where a negotiable receipt has been issued for goods, no seller's lien or right of stoppage in transit shall defeat the rights of any purchaser for value in good faith to whom such receipt has been negotiated, whether such negotiation be prior or subsequent to the notification to the warehouseman who issued such receipt of the seller's claim to a lien or right of stoppage in transitu. Nor shall the warehouseman be obliged to deliver or justified in delivering the goods to an unpaid seller unless the receipt is first surrendered for cancellation.

SEC. 1684m-52. A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a receipt, knowing that the goods for which such receipt is issued have not been actually received by such warehouseman, or are not under his actual control at the time of issuing such receipt, shall, upon conviction thereof, be punished by imprisonment in the state prison for not more than five years nor less than one year, or by a fine not exceeding five thousand dollars, or by both.

SEC. 1684m-53. A warehouseman, or any officer, agent, or servant of a warehouseman, who fraudulently issues or aids in fraudulently issuing a receipt for goods, knowing that it contains any false statement, shall, upon conviction thereof, be punished by imprisonment in the state prison for not more than five years nor less than one year, or by a fine not exceeding five thousand dollars, or by both.

SEC. 1684m54. A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a duplicate or additional negotiable receipt for goods, knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncancelled, without plainly placing upon the face thereof the word "duplicate," except in the case of a lost or destroyed receipt, after proceedings as

provided for in section 1684m-15, shall, upon conviction thereof, be punished by imprisonment in the state prison for not more than five years nor less than one year, or by a fine not exceeding five thousand dollars, or by both.

Sec. 1684m-55. Where there are deposited with or held by a warehouseman goods of which he is owner, either solely or jointly or in common with others, such warehouseman, or any of his officers, agents, or servants who, knowing this ownership, issues or aids in issuing a negotiable receipt for such goods which does not state such ownership, shall, upon conviction thereof, be punished by imprisonment in the state prison for not more than five years nor less than one year, or by a fine not exceeding five thousand dollars, or by both.

Sec. 1684m-56. A warehouseman, or any officer, agent, or servant of a warehouseman who delivers goods out of the possession of such warehouseman, knowing that a negotiable receipt, the negotiation of which would transfer the right to the possession of such goods, is outstanding and uncancelled, without obtaining the possession of such receipt at or before the time of such delivery, shall, except in the cases provided for in sections 1684m-15 and 1684m-37, upon conviction thereof, be punished by imprisonment in the state prison for not more than five years nor less than one year, or by a fine not exceeding one thousand dollars, or by both.

Sec. 1684m-57. Any person who deposits goods to which he had not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage, shall, upon conviction thereof, be punished by imprisonment in the state prison for not more than one year, or by a fine not exceeding one thousand dollars, or by both.

Sec. 1684m-58. A warehouseman, or any officer, agent, or servant of a warehouseman, who shall sell, incumber, ship, transfer, or in any manner remove beyong the immediate control of the warehouseman any property deposited with such warehouseman upon such receipt, without the consent of the holder of such receipt, shall, upon conviction thereof, be punished by imprisonment in the state prison for not more than five years nor less than one year, or by a fine not exceeding five thousand dollars, or by both.

Sec. 1684m-59. Any person who shall wilfully alter or destroy any receipt or register of receipts or any warehouseman, or any officer, agent or servant of a warehouseman, who shall issue any receipt without entering the same as required by section 1684m-3, shall upon conviction thereof, be punished by imprisonment in the state prison for not more than five years nor less than one year, or by a fine not exceeding five thousand dollars, or by both.

Sec. 1684m-60. In any case not provided for in this act, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall govern.

Sec. 1684m-61. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Sec. 1684m-62. 1. In this act, unless the context or subject matter otherwise requires,

(1) "Action" includes counter-claim, set-off, and suit in equity.

(2) "Delivery" means voluntary transfer of possession from one person to another.

(3) "Fungible goods" means goods of which any unit is, from its nature or by mercantile custom, treated as the equivalent of any other unit.

(4) "Goods" means chattels or merchandise in storage, or which has been, or is about to be stored.

(5) "Holder" of a receipt means a person who has both actual possession of such receipt and a right of property therein.

(6) "Order"" means an order by indorsement on the receipt.

(7) "Owner" does not include mortgagee or pledgee.

(8) "Person" includes a corporation or partnership, or two or more persons having a joint or common interest.

(9) To "purchase" includes to take as mortgagee or as pledgee.

(10) "Purchaser" includes mortgagee and pledgee.

(11) "Receipt"" means a warehouse receipt.

(12) "Value" is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a receipt is taken either in satisfaction thereof or as security therefor.

(13) "Warehouseman" means a person lawfully engaged in the business of storing goods for profit, provided that this act shall not apply to common carriers who store merchandise or other property received by them as such common carriers.

2. A thing is done "in good faith" within the meaning of this act when it is in fact done honestly, whether it be done negligently or not.

Sec. 1684m-63. The provisions of this act do not apply to receipts made and delivered prior to the taking effect of this act.

Sec. 1684m-64. All acts or parts of acts inconsistent with this act are hereby repealed.

Sec. 1684m-65. This act shall take effect on the first day of September, one thousand nine hundred and nine.

Sec. 1684m-66. This act may be cited as the warehouse receipts act. Approved June 3, 1909.

Duty of consignee or bailee:—Whenever any personal property shall be consigned to or deposited with any common carrier, forwarding merchant, wharfinger, or warehouseman, innkeeper or the keeper of any depot for the storage of baggage, merchandise or other personal property, such consignee or bailee shall immediately cause to be entered in a proper book kept by him a description of such property with the date of the reception thereof; and if the same shall not have been so consigned or deposited for the purpose of being forwarded or disposed of according to directions received by such consignee or bailee at or before his reception thereof he shall immediately notify the owner by mail thereof, if his name and residence be known or can with reasonable diligence be ascertained. Wisconsin Statutes, 1911, sec. 1637.

Disposition of proceeds:—If the owner of the property sold, or his legal representatives, shall at any time within five years after such money shall have been deposited in the county treasury,

furnish satisfactory evidence to the treasurer of the ownership of such property, he or they shall be entitled to receive from such treasurer the amount so deposited with him. If not claimed within said time by the owner or his legal representatives the same shall belong to the county. *Id.* sec. 1645.

Officers' fees:—The fees allowed to any justice of the peace under this chapter shall be one dollar for each day's service, and to any constable the same fees as are allowed by law for sales upon execution, and ten cents per folio for making an inventory of property. *Id.* sec. 1646.

Perishable property, held for carriage or storage, how disposed of:—If any property delivered to any common carrier, forwarding merchant, wharfinger, or warehouseman, for carriage or storage, shall be in a state of decay, or manifestly liable to immediate damage and decay, the person in whose custody the same shall then be, his agent or attorney, may make an affidavit of such fact, and present the same to a circuit judge, county judge, court commissioner, or justice of the peace of the county in which such property shall then be, and such circuit judge, county judge, court commissioner, or justice of the peace, shall thereupon immediately make an order requiring the sheriff or any constable of such county to immediately inspect such property, and directing him, if the same shall be found by him to be in a state of decay, or manifestly liable to immediate damage or decay, to summarily sell the same without notice. If such sheriff or constable shall upon inspection, find such property to be in a state of decay, or manifestly liable to immediate damage or decay, he shall attach to such order his affidavit stating such fact, and shall make an inventory of said property, and shall thereupon summarily sell said property without notice, and shall make full return of his execution of said order to the judge or justice who issued the same, together with his affidavit, inventory, and the proceeds of said sale, after deducting his fees therefrom. From the proceeds of such sale the judge or justice shall pay all legal charges that have been incurred in relation to such porperty, or a ratable proportion of each charge if the proceeds of such sale shall not be sufficient to pay all the charges; and the balance, if any there be, he shall immediately pay over to the treasurer of his county, with a copy of all the proceedings in said matter. The county treasurer shall file such copy in his

office. The person in whose custody such property shall be when any such proceeding for the sale thereof shall be commenced, shall immediately notify the consignor and consignee of such sale, which notice shall be in writing, and shall be served by leaving a copy thereof with the consignor and consignee, personally or by mail. *Id.* Sec. 1646-1.

Perishable property, held otherwise, how disposed of:—If any such property shall be perishable or subject to decay by keeping, the person in whose custody such property shall then be, his agent or attorney, may make an affidavit of such fact and present the same to a circuit judge, county judge, court commissioner, or justice of the peace of the county in which such property shall then be, and such circuit judge, county judge, court commissioner, or justice of the peace, shall thereupon immediately make an order requiring the sheriff or any constable of such county to immediately inspect such property, and if the same shall be found by him to be perishable or subject to decay by keeping, to make and return an affidavit of such fact. Upon the return of such affidavit, the judge or justice making such order shall immediately make an order requiring such sheriff or constable to sell such property at public auction, first giving ten days' public notice of the time and place of such sale by one publication in a newspaper published in the county, and serving upon the consignor, the consignee, and the custodian, of such property, if they shall be known, a copy of said notice by mail. Such sheriff or constable shall, at the time and place fixed by said notice, unless said property has been otherwise lawfully disposed of, sell said property at public auction, and shall make full return of his execution of said order, and return the same with an inventory of said property and the proceeds of said sale, after deducting his fees, to the judge or justice making such order. From the proceeds of such sale, said judge or justice shall pay all legal charges that have been incurred in relation to such property, or a ratable proportion of each charge, if the proceeds of such sale shall not be sufficient to pay all the charges; and the balance, if any there be, he shall immediately pay over to the treasurer of his county, with a copy of all the proceedings in said matter. The county treasurer shall file such copy in his office. The person in whose custody such property shall be when any such proceedings for the sale thereof shall be commenced,

shall immediately notify the consignor and consignee of such sale, which notice shall be in writing, and shall be served by leaving a copy thereof with the consignor and consignee personally or by mail. *Id.* Sec. 1646-2.

Unclaimed property, how disposed of:—When any such property shall not be perishable or subject to decay and shall not be claimed and taken away within one year after it shall have been so received, the same may be sold as follows:

The person in whose custody such property shall then be, his agent or attorney, may make an affidavit of the facts and present the same to a circuit judge, county judge, court commissioner, or justice of the peace of the county in which such property shall then be, and such circuit judge, county judge, court commissioner, or justice of the peace, shall thereupon immediately make an order requiring the sheriff or any constable of such county to sell such property at public auction, first giving sixty days' notice of the time and place of such sale to the consignor, the consignee, and the custodian of such property. Such notice shall be in writing and shall be served personally or by mail upon such of such persons the names and residences of whom are known. If the name or residence of any of such persons is unknown and cannot with reasonable diligence be ascertained, such sheriff or constable shall make an affidavit of such fact, and shall thereupon cause such notice to be published in a newspaper of the county at least once in each week for six successive weeks before such sale. At the time and place of such sale such sheriff or constable shall sell said property at public auction and shall make a full return of this proceedings under said order to the judge or justice making the same, together with proof of service or publication of the notice of the sale, and an inventory of the property sold and the proceeds of such sale after deducting his fees. From the proceeds of such sale the judge or justice shall pay all legal charges that have been incurred in relation to such property, including the charges of the person in whose custody said property was when said proceedings were begun, or a ratable proportion of each charge if the proceeds of such sale shall not be sufficient to pay all the charges; and the balance, if any there be, he shall immediately pay over to the treasurer of his county, with a copy of all proceedings in said matter. The county treasurer shall file such copy in his office. The person in whose custody such

property shall be when any such proceeding for the sale thereof shall be commenced, shall immediately notify the consignor and consignee of such sale, which notice shall be in writing, and shall be served by leaving a copy thereof with the consignor and consignee, personally or by mail. *Id.* Sec. 1646-3.

Of factors, brokers, etc., for advances, etc.:—Every factor, broker or other agent intrusted by the owner with the possession of any bill of lading, custom-house permit, warehouse receipt or other evidence of the title to personal property, or with the possession of personal property for the purpose of sale or as security for any advances made or liability by him incurred in reference to such property, shall have a lien upon such personal property for all such advances, liability incurred or commissions or other moneys due him for services as such factor, broker or agent, and may retain the possession of such property until such advances, commissions or moneys are paid or such liability is discharged. *Id.* Sec. 3346.

How such liens enforced:—Every person having a lien given by either of the four last sections or existing in favor of any bailee for hire, carrier, warehouseman or pawnee or otherwise, by the common law, may, in case such debt remain unpaid for three months and the value of the property affected thereby does not exceed one hundred dollars, sell such property at public auction and apply the proceeds of such sale to the payment of the amount due him and the expenses of such sale. Notice, in writing, of the time and place of such sale and of the amount claimed to be due shall be given to the owner of such property personally, or by leaving the same at his place of abode, if a resident of this state, and if not, by publication thereof once in each week, for three weeks successively, next before the time of sale in some newspaper published in the county in which such lien accrues, if there be one, and if not, by posting such notice in three public places in such county. If such property exceed in value one hundred dollars, then such lien may be enforced against the same by action in any court having jurisdiction. *Id.* sec. 3347.

Embezzlement—Amendment to act against:—Any officer, agent, clerk, employe or servant of this state, or of any county, town, school district, city, village or other municipal corporation

therein, or of any banking, railroad, insurance or telegraph company or other corporation, or of any joint stock company or association, or in the service or employment thereof, who, by virtue of such office or employment, shall have the possession or custody of, or who shall be entrusted with, the safekeeping, the disbursement, investment or payment of any money or fund, or with the safekeeping, sale, carrying or delivering of any goods, wares, merchandise, produce, lumber or any other property or thing which is the subject of larceny, belonging to or under the care or control of the state, or such municipal or other corporation, or in which the state or such corporation has an interest, or any factor, carrier, warehouseman, storage, forwarding or commission merchant, or any bailee, executor, administrator, guardian, or any trustee, agent, clerk, attorney, messenger, employe or servant of any private person, corporation, copartnership or association, except apprentices and other persons under the age of sixteen years, who, by virtue of his business or employment, shall have the care, custody, or possession of or shall be entrusted with the safekeeping, disbursement, investment or payment of any money, or shall have the care, custody or possession of, or shall be entrusted with the safekeeping, carrying, sale or delivery of any goods, wares, merchandise, produce, lumber or any other property or thing which is the subject of larceny, belonging to such other person, corporation, copartnership or association, shall embezzle or fraudulently convert to his own use, or to the use of any other person except the owner thereof, or shall take, carry away or secrete, with intent to convert to his own use, or to the use of any other person except the owner thereof, any such money, fund, goods, wares, merchandise, produce, lumber or any other property or thing, shall be punished, if the money or property so embezzled shall exceed the value of * * * twenty-five thousand dollars, by imprisonment in the state prison not more than * * * Twenty-five years nor less than * * * ten years, and if the money or property so embezzled shall not exceed the value of * * * twenty-five thousand dollars and shall exceed the value of * * * ten thousand dollars, by imprisonment in the state prison * * * not more than * * * twenty years nor less than * * * five years, or if the money or property so embezzled shall not exceel the value of * * * ten thousand dollars and shall exceed the value of one thousand dollars, by im-

prisonment in the * * * state prison not more than * * * ten years nor less than one year, and if the money or property so embezzled shall exceed the value of one hundred dollars and shall not exceed the value of one thousand dollars, by imprisonment in the state prison not more than five years nor less than one year, and if the money or property so embezzled shall not exceed the value of one hundred dollars and shall exceed the value of twenty dollars, by imprisonment in the state prison or county jail not more than one year nor less than six months, or by fine not exceeding two hundred dollars, and if the money or property so embezzled shall not exceed the value of twenty dollars, by imprisonment in the county jail not more than six months or by fine not exceeding one hundred dollars. Any person who is a member of any copartnership or one of two or more beneficial owners of any property specified in this section, or of any property or thing which is the subject of larceny, who shall embezzle or fraudulently convert to his own use or to the use of any other person, except the other members of such copartnership or the other beneficial owners of such property or thing, or who shall take, carry away or secrete, with intent to convert to his own use or to the use of any other person except as aforesaid, any such property or thing, shall be punished as provided in this section the same as if he had not been or was not a member of such copartnership or one of such beneficial owners. The offense of embezzlement may be prosecuted and punished in any county of which the person charged had possession of the property or thing alleged to have been embezzled. *Id.* sec. 4418.

Commission created:—There is hereby created a grain and warehouse commission for the state of Wisconsin to consist of three members to be appointed by the governor of the state of Wisconsin, as hereinafter more particularly provided. Wisconsin Statutes 1911, Sec. 1747-1.*

Personnel:—Such commissioners shall be appointed by the governor of Wisconsin, but no person interested in any elevator or warehouse or in the transportation of grain or in the employ of any person or corporation owning or operating any elevator or warehouse or engaged in the transportation of grain, or in the employ of any common carrier shall be appointed to member-

*Note:—This Act was held void in so far as it pertains to interstate commerce. *Globe Elevator Co.* v. *Andrew*, 144 Fed. 871, see also 156 Fed. 664.

ship on such commission. Before making such appointment, the governor shall request the governor of the state of North Dakota, the governor of the state of New York and the board of trade of the city of Superior to respectively recommend a person or persons for appointment upon such commission which said recommendations shall be taken into consideration by the governor in appointing such commissioners, but he shall not be confined to the persons so recommended in appointing such commissioners. *Id.* Sec. 1747-2.

Grain and warehouse commission—Appointment—Terms—Vacancy—Removal:—The commissioners heretofore appointed under sections 1747-1 to 1747-55, inclusive, shall hold their offices until the first Monday in February, 1910, and until their successors are appointed and qualified. On or before the first Monday in February, 1910, the governor shall appoint three commissioners; the term of one such appointee shall terminate on the first Monday in February, 1911; the term of the second such appointee shall terminate on the first Monday in February, 1912; and the term of the third such appointee shall terminate on the first Monday in February, 1913. In January, 1911, and annually thereafter there shall be appointed in the same manner one commissioner for the term of three years from the first Monday in Feburuary of such year. Each commissioner so appointed shall hold his office until his successor is appointed and qualified. And in case of any vacancy in such commission, the governor shall fill the vacancy for the unexpired term so made vacant in the same manner as original appointments are required to be made. And such commissioners shall be subject to removal, for cause, by the governor in the same manner as county officers may be removed. *Id.* Sec. 1747-3.

Oath of office—Bond:—Each of such commissioners shall, before entering upon the duties of his office, take and file with the secretary of state his oath of office that he will support the constitution of the United States, of the state of Wisconsin and the laws thereof, and faithfully perform the duties of his office to the best of his ability, and shall also execute and file with the state treasurer a bond to the state of Wisconsin in the sum of five thousand dollars, with sufficient surety to be approved by the governor of the state, and conditioned for the faithful performance of the duties of his office, and that he will fully account for

any and all moneys which may come into his hands by virtue of his office, and that he will pay over such funds as herein directed. *Id.* Sec. 1747-4.

Duties:—It shall be the duty of the commission created by sections 1747-1 to 1747-55, inclusive, to superintend the inspection, weighing and grading of all grain milled or received for milling, bought or sold in the city of Superior, and of all grain received for storage, stored or shipped from any and all elevators and warehouses located in said city which are required to take out license under the provisions of this act. For the purpose of making such inspection, weighing and grading of grain said commission shall have the power, and it shall be their duty to appoint a chief inspector and one or more deputy inspectors, a weighmaster and one or more deputy weighmasters, and to adopt and publish rules and regulations governing the inspection, weighing and grading of grain delivered into or shipped out of any and all such elevators and warehouses in said city. And there is further granted to said commission full power and authority to make such further regulations as will enable them to fully comply with all the provisions of this act, including the granting of licenses to elevators and warehouses hereinafter provided for, and the establishment and collection of charges and fees for the inspection, weighing and grading of the grain.

The commission may, upon request, enforce reasonable regulations for the weighing of cars of coal offered for shipment in carload lots and may direct any deputy weighmaster to weigh coal in carload lots on the docks within the territory under its jurisdiction, except coal shipped by any person, firm or corporation for its own use or consumptin, and issue weighing certificates therefor, and to inspect and supervise scales therefor. The commission shall fix a fee for any such services, and such fee and all expenses incurred by the commission in complying with such request shall be paid by the person, firm or corporation making the request therefor. *Id.* Sec. 1747-5 as amended by Chap. 164 Laws Wisconsin 1913.

Public warehouses:—All elevators and warehouses located in the city of Superior doing business for a compensation, and all elevators and warehouses located in said city in which the grain of different owners is stored in bulk or mixed together, or stored in such manner that the identity of different lots and par-

cels cannot be accurately preserved, and all elevators and warehouses located in said city which issue warehouse receipts for grain received or stored are hereby declared to be public warehouses. Wisconsin Statutes 1911, Sec. 1747-6.

Warehouse licenses:—The owner, lessee or manager of any public warehouse in the city of Superior shall be required, before transacting any business, to procure from the grain and warehouse commission a license permitting him to transact business as a public warehouseman under and pursuant to sections 1747-1 to 1747-55, inclusive, which license shall be issued by said grain and warehouse commission upon written application, which shall set forth the location and name of such warehouse, and the individual name of each person interested as owner or principal in the management of the same, or if such warehouse be owned or managed by a corporation, the name of the president, secretary and treasurer of such corporation shall be stated, and such license shall give authority to carry on and conduct the business of a public warehouse pursuant to sections 1747-1 to 1747-55, inclusive, and shall be revocable by said commission upon summary proceedings upon complaint of any person in writing setting forth the particular violation of the law, and upon satisfactory proof to be taken in such action in such manner and upon such notice as may be directed by the commission. *Id.* Sec. 1747-7.

Bond of licensee:—Before receiving such license, the person applying for the same shall file with the commission a bond to the state of Wisconsin in the penal sum of ten thousand dollars, with good and sufficient sureties to be approved by the commission, conditioned for the faithful performance of his duty as a public warehouseman, and for a full compliance with all the laws of the state relating thereto; and shall pay to said commission a license fee of two dollars for each license so applied for, provided that where any person or corporation procures a license for more than one warehouse in said city, only one such bond need be given. *Id.* Sec. 1747-8.

Penalty on default of license:—Any person who shall transact the business of a public warehouseman within the city of Superior without first procuring the license herein provided, or who shall continue to transact business after such license has been revoked (save only that he may be permitted to deliver

property previously stored in such warehouse) shall on conviction be fined a sum not less than one hundred or more than five hundred dollars for each and every day such business is carried on, and the commission may refuse to grant a new license to any person whose license shall have been revoked for a period of one year from the time of such revocation. *Id.* Sec. 1747-9.

How grain stored—Mixing—Inspection fees—Suit for:—It shall be the duty of every public warehouseman to receive for storage any and all grain that is dry and in a suitable condition for warehousing that may be tendered to him in the usual manner in which warehouses are accustomed to receive the same in the ordinary and usual course of business, not making any discrimination between the persons desiring to avail themselves of the warehouse facilities. Such grain to be in all cases inspected and graded by a duly authorized inspector appointed under the provisions of sections 1747-1 to 1747-55, inclusive, and to be stored with grain of similar grade, but in no case shall grain of different grades be mixed together while in storage, except as hereinafter provided, though if the owner or consignee so requests and the warehouseman consents thereto, his grain of the same grade may be kept in a bin by itself apart from that of other owners, which bin must be marked and known as "special bin." If a warehouse receipt be issued for grain so kept in separate bins, it shall state on its face that it is for grain so stored in a special bin, and shall state the number of such bin, and all such special bin grain delivered from such warehouse shall be inspected on its delivery by a duly authorized inspector appointed under sections 1747-1 to 1747-55, inclusive. Nothing in this section shall be construed to require the receipt of any kind of grain into any warehouse which has not sufficient room to contain or store it properly. The charges for inspection upon receipt and delivery shall be paid by the warehouseman, and may be added to the charge for storage. The grain and warehouse commission may recover such charges of the warehouseman, and for that purpose and for the purpose of fully carrying out the provisions of sections 1747-1 to 1747-55, inclusive, the said commission may sue and be sued in the name of the "Grain and Warehouse Commission for the State of Wisconsin." *Id.* Sec. 1747-10.

Warehouse receipts—Numbers:—Upon application of the owner or consignee of grain stored in public warehouses as de-

fined in this act, accompanied with evidence that all transportation and other charges which may be a lien upon such grain, including charges for inspection and weighing thereof, have been paid, and not otherwise, the warehouseman shall issue to the person entitled to receive the same a warehouse receipt therfor subject to the order of such owner or consignee, which receipt shall bear even date with the receipt of the grain in store, and shall state upon its face the quantity and grade of the grain as fixed by the inspection provided for in this act, and that the grain mentioned in said receipt has been received into store to be stored with grain of the same grade, and is deliverable upon the return of the receipt properly indorsed by the person to whose order it shall be issued and the payment of the proper charges for storage. All warehouse receipts for grain issued by the same warehouse shall be consecutively numbered, and no two receipts bearing the same number shall be issued from the same warehouse during any calendar year, except in case of a lost or destroyed receipt, in which case a new receipt may be issued which shall bear the same date and number as the original receipt, and shall have plainly stamped or marked across its face the word "duplicate." Each such receipt shall state, if the grain is received from cars, the number of each car together with the amount it contained; if from vessels, the name of such craft, together with the amount it contained; if from teams or by other means, the amount and manner of its receipt. *Id.* Sec. 1747-11.

Receipts—New receipts:—Upon delivery of grain from store upon any receipt, such receipt shall have plainly stamped or marked across its face the word "canceled," with the name of the person canceling the same, and such receipt shall thereafter be void and shall not again be put in circulation, nor shall grain be delivered twice upon the same receipt. No receipt shall be issued except upon actual delivery of grain into store in the warehouse from which it purports to be issued, and which is to be represented by said receipt; nor shall any receipt be issued for a greater quantity of grain than is contained in the lot stated to have been received; nor shall more than one receipt be issued for the same lot of grain, except in cases where a recipt for a part of the lot is desired, and then the aggregate receipts for a particular lot shall cover that lot and no more. In cases where a part of the grain represented by the receipt issued thereon is

delivered out of store, and the remainder is left in store, a new receipt may be issued for such remainder, but the new receipt shall bear the same date as the original receipt, and shall state on its face that it is for the balance of the grain represented by the original receipt, giving the number thereof, and the original receipt shall thereupon be canceled in the same manner as if the grain represented thereby had all been delivered. In case it is desirable to divide one receipt into two or more receipts, or in case it is desirable to consolidate two or more receipts into one receipt, and the warehouseman consents thereto, the original receipt shall thereupon be canceled in the same manner as if the grain represented thereby had been delivered from store, and the new receipts shall state on their face that they are a part of another receipt, or a consolidation of other receipts, as the case may be, and shall also state the number of the original receipt so canceled as aforesaid, but no consolidation of receipts differing in dates more than ten days shall be permitted. And all such new receipts issued in lieu of old receipts which have been canceled as herein provided, shall bear the same date as the original receipts as near as may be. *Id.* Sec. 1747-12.

Liability not limited:—No warehouseman operating or running a public warehouse as defined in sections 1747-1 to 1747-55, inclusive, shall insert in any receipt issued by him any language which shall in any wise limit or modify his liability or responsibility as imposed by the provisions of sections 1747-1 to 1747-55, inclusive, or the laws of this state, and no such warehouse receipt shall be issued unless it be issued at the warehouse or at the office of the warehouseman kept in the city of Superior, and shall not be delivered until a record is made of the issuing thereof, containing the date, number, amount, kind and grade of grain, which record shall at all times be kept at the warehouse, or at some other office of said warehouseman in the city of Superior, and shall be open to the inspection of any and all persons having grain stored in such elevator or warehouse, or holding any receipt upon grain stored therein, and any warehouse receipt issued contrary to the provisions of this section shall be absolutely null and void. *Id.* Sec. 1747-13.

Redemption of receipts—Defaults:—On the return of any warehouse receipt issued by him properly indorsed, and a tender of all proper charges upon the grain represented by it, such grain

shall be delivered to the holder of such receipt, and it shall not be subject to any further charges for storage after such demand and tender for such delivery shall have been made, and grain represented by such receipt shall be delivered within twenty-four hours after such tender and demand shall have been made, and the cars or vssels to receive the same shall have been furnishd. Such receipt and payment of charges may be tendered and made at the warehouse, or at the office of the warehouseman kept and provided as required by section 1747-13. Any warehouseman who shall make default in delivery of grain as herein provided, shall be liable to the owner of such grain or to the owner of the warehouse receipt issued thereon for any such default in the sum of one cent per bushel, and in addition thereto to one cent per bushel for each and every day of such neglect or refusal to so deliver; provided, that no warehouseman shall be held to be in default in delivery of grain if the grain is delivered in the order demanded and as rapidly as due diligence, care and prudence will justify. *Id.* Sec. 1747-14.

Report to commission:—It shall be the duty of every owner, lessee or manager of every public warehouse coming within the provisions of sections 1747-1 to 1747-55. inclusive, to furnish in writing under oath to the grain and warehouse commission, at such times as said commission may require or demand, the statement concerning the condition and management of his business as such warehouseman. *Id.* Sec. 1747-15.

Weekly and daily statements:—Every warehouseman within the provisions of this act shall on or before Tuesday morning of each week cause to be made out, and shall keep posted up in a conspicuous place in the business office of his warehouse within the city of Superior, a statement of the amount of each kind and grade of grain in store in the warehouse up to the close of business on the previous Saturday, and shall also on each Tuesday morning render a similar statement to the grain and warehouse commission, which statements shall be made under oath by one one of the principal owners or operators of said warehouse, or by the bookkeeper thereof having personal knowledge of the facts. Every warehouseman shall also be required to furnish daily to said commission a correct statement of the amount of each kind and grade of grain received in store in the warehouse on the previous day; also the amount of each kind and

grade of grain delivered or shipped by him during the previous day, and the warehouse receipts that have been canceled upon which the grain has been delivered on such day, giving the number of each such receipt and the amount and kind of grain and the grade thereof received or shipped on each; also how much grain, if any, was so delivered or shipped, and the amount, kind and grade of it, on which warehouse receipts have not been issued; when and how such unreceipted grain was received by them; the aggregate amount of such receipted cancellations and delivery of unreceipted grain corresponding in amount, kind and grade with the amount so reported delivered or shipped; every warehouseman shall also at the same time report what receipts, if any, have been canceled and new receipts issued in their stead, as herein provided for, and in making such statements he shall in addition furnish such commission such further information regarding receipts issued or canceled as may be necessary to enable said commission to keep a full and correct record of all receipts issued and canceled and of all grain received and delivered. *Id.* Sec. 1747-16.

Secretary:—It is hereby made the duty of said commission to appoint one of their members as secretary, who shall keep the records of said commission and receive the reports in accordance with the provisions of sections 1747-1 to 1747-55, inclusive. *Id.* Sec. 1747-17.

Table of rates to be published annually—Maximum rates:—Every warehouseman coming under the provisions of sections 1747-1 to 1747-55, inclusive, shall during the first week in September of each year publish in one or more of the daily newspapers in the city of Superior a table or schedule of rates for the storage of grain in his warehouse during the ensuing year, which rate shall not be increased during the year, and such published rates, or any published reduction thereof, shall apply to all grain received in such warehouse from any person or source, and no discriminations as to rates shall be made, either directly or indirectly, by such warehouseman for the storage of grain. The maximum charge for the storing and handling of grain, including the cost of receiving and delivering, shall be for the first fifteen days, or fraction thereof, one-half cent per bushel, and one-half cent additional for every additional thirty days, or fraction thereof, thereafter.

Provided that if any warehouseman or other person shall deem said charges or either of them unreasonable he may file with the grain and warehouse commission a complaint in writing, stating the reason or ground upon which said charges or either of them are unreasonable, whereupon the commission shall set a time and place for hearing said complaint, which time shall not be later than ten days after the filing of said complaint. Upon said hearing, if the commission shall be of the opinion that the said charges or either of them are unreasonable it may increase or diminish said charges or either of them, such increased or diminished charge to go into effect immediately and remain in effect until increased or diminished upon a like hearing or upon appeal. If the warehouseman or other person making said complaint shall feel aggrieved by the decision of the commission he may appeal therefrom to the circuit court of Douglas county in the same manner and with like effect as appeals are now taken from the disallowance of claims by the county board. The commission shall have the power to administer oaths, issue subpoenas, compel the attendance of witnesses and the production of books and papers. In case of failure on the part of any person or persons to comply with the order of the commission or any subpoena, or of the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated, it shall be the duty of the circuit court of Douglas county or the judge thereof, on application of the commission, to compel obedience by attachment proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court, or a refusal to testify therein. The commission or any warehouseman or other person making said complaint may cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like deposition in civil actions in circuit courts. *Id.* Sec. 1747-18.

Warehouseman not to tamper with grain—"Special grade" grain—Warehouseman not responsible for damage by fire or heating—Authority of warehouseman respecting grain out of condition:—It shall not be lawful for any public warehouseman to mix grain of different grades together, nor to select different qualities of the same grade for the purpose of storing or delivering the same. Neither shall he attempt to deliver grain of one grade for another, nor in any way tamper with grain while

in his possession or custody with a view of securing profit to himself or any other person. The grain and warehouse commission shall have authority under sections 1747-1 to 1747-55, inclusive, in their discretion, to grade any lot of grain "special grade" upon the request of the owner so to do; and such lot of grain shall only be received into public warehouses within the authority of sections 1747-1 to 1747-55, inclusive, as "special grade" grain, and shall be kept in a bin or bins by itself apart from that of other owners, and said bin or bins shall thereupon be marked and known as "special bins." Any warehouseman may, on the request of the owner of any grain stored in any such special bin, be permitted to mix, dry, clean or otherwise improve the condition or value of any such lot of grain; provided, that such lot of grain has been inspected by authority of the grain and warehouse commission as "special grade." If a warehouse receipt is issued for any such lot of grain, it shall state on its face that it is issued for "special grade" grain, and shall also state the number or numbers of the special bin or bins where the same is stored. Upon the application of the owner of any grain known as "special grade," the grain and warehouse commission may re-inspect the same for the purpose of giving it its proper grade. The warehouseman shall, upon the surrender of the original warehouse receipt issued against such "special grade" grain, cancel said receipt and issue in lieu thereof a new receipt which shall state the grade of the grain so re-inspected, and said warehouseman may then store said grain with other grain of a similar grade. Nothing in this section shall, however, prevent any warehouseman from removing grain while within his warehouse for its preservation or safe keeping. No warehouseman shall be responsible for any loss or damage to grain by fire while in his custody; provided, reasonable care and diligence be exercised to protect and preserve the same, nor shall he be held liable for damage to grain by heating; provided, it can be shown that he exercised proper care in handling and storing the same, and that such heating was the result of causes beyond his control; and in order that no injustice may result to the holder of grain in any public warehouse of the city of Superior it shall be deemed the duty of such warehouseman to dispose of by delivery or shipping, in the ordinary and legal manner of so delivering, that grain of any particular grade which was first received by them,

or which has been for the longest time in store in his warehouse, and unless public notice has been given by a warehouseman that some portion of the grain stored in his warehouse is out of condition, or becoming so, he shall deliver grain of quality equal to that received by him on all receipts as presented. In case, however, that any warehouseman shall discover that any portion of the grain in his warehouse is out of condition, or becoming so, and it is not in his power to preserve the same, he shall immediately give public notice of its actual condition, as near as he can ascertain, by advertisement in a daily newspaper in the city of Superior, and by posting a notice in the most public place (for such purpose) in such city. Such notice shall state the amount, kind and grade of grain, the bins in which the same is stored, the receipt or receipts outstanding upon which such grain will be delivered, giving the numbers, amounts and dates of each (which receipts shall be those of the oldest dates then in circulation or uncanceled, the grain represented by which has not been previously been receipted for); and the name of the party for whom such grain was stored, the date it was received and the amount thereof. The enumeration of receipts and identification of grain so discredited in said notice shall embrace, as near as may be, as great a quantity of grain as is contained in said bins and such grain shall be delivered upon the return and cancellation of the receipts and the unreceipted grain upon request of the owner or person in charge thereof. Nothing herein contained shall be held to relieve the warehouseman from exercising proper care and diligence in preserving any such grain after such publication of its condition, but such grain shall be kept separate and apart from all direct contact with other grain, and shall not be mixed with other grain while in store in such warehouse. In case the grain be declared to be out of condition as herein provided for shall not be removed from store by the owner thereof within two months from the date of the notice of its being out of condition, it shall be lawful for the warehouseman to sell the same at public auction for the account of said owner, by giving ten days' public notice by advertisement in a daily newspaper published in the city of Superior. Any warehouseman guilty of any act or neglect, the effect of which is to depreciate grain stored in any warehouse under his control, shall be held responsible as at common law upon his bond, and in addition thereto his license shall be

revoked. Nothing in this section shall be so construed as to permit any warehouseman to deliver any grain stored in a special bin or by itself to any person other than the owner of such lot of grain, whether the same be represented by receipts or otherwise.

Nor shall any warehouseman be required to receive any more "special grade" grain than he can store conveniently having reference to the capacity of his house and the amount of regular grades stored therein. *Id.* Sec. 1747-19.

Inspection—Test of scales—Penalty:—All persons owning grain, or who may be interested in the same in any public warehouse, and all duly authorized inspectors of such grain, shall at all times, during ordinary business hours, be at full liberty to examine any and all grain stored in any public warehouse in the city of Superior, and all proper facilities shall be extended to such person by the warehouseman, his agents and servants, for an examination, and all parts of the public warehouse shall be free for the inspection and examination of any person interested in grain stored therein, or of any authorized inspector of such grain. And all scales used for the weighing of grain in public warehouses shall be subject to examination and test by any duly authorized inspector, weighmaster or sealer of weights and measures, at any time when required by any person or persons, agent or agents, whose grain has been, or is to be weighed on such scales. The expense of such test by an inspector or sealer to be paid by the warehouse proprietor if the scales are found incorrect, but not otherwise. Any warehouseman who shall be guilty of continuing to use scales found to be in an imperfect or incorrect condition, by such examination and test, until the same shall have been pronounced correct and properly sealed, shall be liable to be proceeded against as herein provided. *Id.* Sec. 1747-20.

Duty of weighmaster:—The weighmaster appointed by the grain and warehouse commission and his deputies, shall supervise and have exclusive control of the weighing of grain received into any mill or received, stored or delivered or shipped from any and all public warehouses in the city of Superior, and also the inspection of scales upon which grain is weighed; and the action or certificates of such weighmaster or his assistants, in the discharge of their duties, shall be conclusive upon all parties, either

in interest or otherwise, as to the matters contained in said certificates. *Id.* Sec. 1747-21.

Fees:—The grain and warehouse commission shall fix the fees to be paid for the weighing of grain, which fees shall be paid by the warehouseman, and may be added to the charges for storage. *Id.* Sec. 1747-22.

Weighmaster—Assistant—Eligibility—Bonds:—The weighmaster and each and every assistant shall not be a member of any board of trade or association of like character. They shall give bonds in the sum of two thousand dollars, conditioned for the faithful discharge of their duties, and shall receive such compensation as the grain and warehouse commission shall determine, not exceeding, however, one hundred and fifty dollars per month for the weighmaster, one hundred and twenty-five dollars per month for his first assistant, and one hundred dollars a month for each other assistant. *Id.* Sec. 1747-23.

Penalty for obstruction:—In case any person, warehouse or railroad corporation or any of their agents or employes, shall refuse or prevent the weighmaster, or either of his assistants, from having access to their scales in the regular performance of their duties in supervising and weighing of any grain in accordance with the tenor and meaning of sections 1747-1 to 1747-55, inclusive, they shall forfeit the sum of one hundred dollars for each offense to be recovered in an action by the said grain and warehouse commission, and any and all moneys collected shall be turned into and form a part of its general funds. *Id.* Sec. 1747-24.

Chief Inspector—Oath and bond:—The chief inspector appointed as hereinbefore provided, shall hold his office for the term of one year, unless sooner removed by said grain and warehouse commission. He shall, before entering upon the duties of his office, take an oath of office, and shall execute a bond in the penal sum of five thousand dollars with good and sufficient sureties to be approved by said commission, running to said commission and conditioned that he will faithfully and impartially discharge the duties of the office of chief inspector according to law, and the rules and regulations of said grain and warehouse commission, and will pay all damages to any person or persons who may be injured by reason of his neglect or failure to comply

with the law or the rules and regulations aforesaid. *Id.* Sec. 1747-25.

Deputy Inspectors—Oath:—The chief inspector shall appoint, subject to the approval of the grain and warehouse commission, such number of deputy inspectors as may be required, for whose acts the said chief inspector shall be responsible, and his bond shall be considered and held as covering the acts of such deputies. And a like oath shall be taken by each and every deputy and he may be required to give additional bond in the discretion of the grain and warehouse commission. All such deputies shall be subject to removal by the chief inspector at will, and they shall act in the performance of their duties in his name and under his immediate control and supervision. *Id.* Sec. 1747-26.

Bonds:—All bonds required to be given by the weighmaster and his assistants, by the chief inspector and his deputies, shall be given to the grain and warehouse commission as obligee, and shall be filed and kept by it as a part of its records. *Id.* Sec. 1747-27.

Inspectors—Duties—Powers—Salaries:—The chief inspector of grain and all deputy inspectors shall be governed in their inspection duties by such rules and regulations as may be provided and promulgated by the grain and warehouse commission, which shall have power to fix the rates of charges for inspection and weighing of grain, and the manner in which the same shall be collected, which charges shall be regulated in such manner as will, in the judgment of said commission, produce sufficient revenue to meet the necessary expenses of the inspection and weighing service. Said grain and warehouse commission shall fix the amount of compensation to be paid to the chief inspector and deputy inspectors, and prescribe the time and manner of payment thereof, provided the compensation so fixed shall not exceed one hundred and fifty dollars per month for the chief inspector, one hundred and twenty-five dollars per month for a first deputy, and one hundred dollars per month for each other deputy. *Id.* Sec. 1747-28.

Disability:—No chief inspector or deputy, shall during his term of service, be interested directly or indirectly, in the handling, storing, shipping, purchasing or selling of grain. *Id.* Sec. 1747-29.

Removals:—Upon complaint in writing to the grain and warehouse commission, supported by reasonable and satisfactory proof, that the chief inspector or any of his deputies, have violated any of the rules prescribed for his government, or has been guilty of any improper official act, or has been found inefficient or incompetent for the duties of his position, said person shall be by said grain and warehouse commission immediately removed from office. *Id.* Sec. 1747-30.

Imposture:—Any person who shall assume to act as an inspector of grain in the city of Superior, who has not first been appointed as provided in sections 1747-1 to 1747-55, inclusive, or has not made and filed his oath of office and given bond where such bond is required, shall be held to be an imposter, and shall be punished by a fine of not less than one hundred dollars for each and every attempt to so inspect grain, and if the complaint is made by any member of the grain and warehouse commission, or of any inspector or deputy inspector, one-half of said fine shall go to said grain and warehouse commission, and the remaining half to the school fund, and in case the complaint is made by any other person one-half of said fine shall go to the person so complaining and the remaining half to the school fund; such prosecution to be in the name of the state of Wisconsin, and shall be prosecuted by the district attorney of Douglas county or the attorney-general of the state of Wisconsin. *Id.* Sec. 1747-31.

Neglect—Bribery:—Any duly authorized inspector or deputy inspector of grain, who shall be guilty of any neglect of duty, or who shall knowingly or carelessly inspect or grade any grain improperly, or who shall accept any money or other consideration, directly or indirectly, for any neglect of duty, or any improper performance of duty as such inspector of grain, or any person who shall improperly influence any inspector of grain in the performance of his duty as such inspector, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not less than one hundred dollars or more than five hundred dollars, or shall be imprisoned in the county jail not less than thirty days nor more than six months, or both, in the discretion of the court. *Id.* Sec. 1747-32.

Liens:—The charge for the inspection and weighing of grain under the provisions of sections 1747-1 to 1747-55, in-

clusive, shall be and constitute a lien on grain so inspected, or weighed, and whenever such grain is in transit the said charges shall be treated as advanced charges to be paid by the common carrier in whose possession the same is at the time of inspection. *Id.* Sec. 1747-33.

Decisions final:—The decision of the chief inspector, or of the deputy inspector, as to the grade of grain, shall be final and binding on all parties, unless an appeal is taken from such decision, as hereinafter provided. *Id.* Sec. 1747-34.

Appeals:—In case any owner, consignee or shipper of grain, or any warehouse manager, shall be aggrieved by the decision of the chief inspector, or any of his deputies an appeal may be had to the grain and warehouse commission, and a decision of a majority of the members of said commission shall be final and said commission is hereby authorized to make all necessary rules governing such appeal, provided, however, that the party appealing shall pay to said commission not to exceed the sum of two dollars before any such appeal shall be entertained, which sum shall be refunded in case the inspection appealed from is not sustained. *Id.* Sec. 1747-35.

Withhold storage—Conversion:—In case any owner or consignee of grain shall be dissatisfied with the inspection of any lot of grain, or shall from any cause desire to receive his property without its passing into store, he shall be at liberty to have the same withheld from going into any public warehouse (whether the property may have been previously assigned to such warehouse or not) by giving notice to the person or corporation in whose possession it may be at the time of giving such notice; and such grain shall be withheld from going into store, and be delivered to him subject only to such proper charges as may be a lien upon it prior to such notice, the grain in railroad cars to be removed therefrom by such owner or consignee within twenty-four hours after such notice has been given to the railroad company having it in possession; provided, such railroad company place the same in a proper and convenient place for unloading; and any person or corporation refusing to allow such owner or consignee to receive his grain shall be deemed guilty of conversion, and he shall be liable to pay such owner or consignee double the value of the property so converted. Notice that such

grain is not to be delivered into store may also be given to the proprietor or manager of any warehouse into which it would otherwise have been delivered, and if, after such notice, it be taken into store, in such warehouse, the proprietor or manager of such warehouse shall be liable to the owner of such grain for double its market value. *Id.* Sec. 1747-36.

Contracts unlawful:—It shall be unlawful for any proprietor, lessee or manager of any public warehouse to enter into any contract, agreement, understanding or combination with any railroad company or other corporation, or with any individual or individuals, by which the property of any person is to be delivered to any public warehouse for storage or for any purpose, contrary to the direction of the owner, his agent or consignee. *Id.* Sec. 1747-37.

"Superior grades:"—The grain and warehouse commission shall before the fifteenth day of September in each year, establish a grade for all kinds of grain bought, sold or handled, in the city of Superior, which shall be known as "Superior Grades," and the grade so established shall be published in some daily newspaper in the city of Superior. *Id.* Sec. 1747-38.

Samples:—It shall be the duty of the grain and warehouse commission to furnish any elevator or warehouse in the city of Superior standard samples of grain as established by the official inspection made in accordance with the grade established under the next preceding section, when requested so to do by the proprietor, lessee or manager thereof, at the actual cost of such samples. *Id.* Sec. 1747-39.

Supervision by commission:—It shall be the duty of the grain and warehouse commission to assume and exercise a constant supervision over the housing and marketing of grain in the city of Superior, the handling, inspection, weighing and storing of same, and the management of the public houses of said city, and to at least three times annually verify by measurement the amount of grain shown to be in store in all public warehouses, and to investigate all complaints of fraud or oppression in the grain trade, and in the handling and housing of grain in said city, and to correct the same. *Id.* Sec. 1747-40.

Publishing rules:—The rules and regulations adopted by said grain and warehouse commission for the weighing and in-

spection of grain in the city of Superior shall be published in a daily newspaper in said city. *Id.* Sec. 1747-41.

Inspection fees:—The fees and charges for the weighing and inspection of grain to be fixed by the grain and warehouse commission shall not exceed the sum of fifty cents per car for weighing and one dollar per car for inspection. And upon weighing and inspection on shipment by boat, or otherwise, out of the warehouse, not to exceed fifty cents per thousand bushels for weighing, nor more than one dollar per thousand bushels for inspection; and all fees for such service shall be paid to the treasurer of said commission, to be by him kept, disbursed, and fully accounted for as hereinafter provided. *Id.* Sec. 1747-42.

Treasurer:—The grain and warehouse commission shall appoint one of their number treasurer of said commission, and the person so appointed shall make and file with the state treasurer a bond to the state of Wisconsin, in the sum of twenty thousand dollars, conditioned to account for and pay over all moneys coming into his hands, and to keep a just and accurate account of all such moneys according to law; said bond to be approved by the governor of this state. All moneys collected or received, by each and every person, for or in behalf of the Wisconsin grain and warehouse commission, shall be by him deposited with or transmitted to the state treasurer. Such deposit shall in every case be made at least once a week, and at the time of the transmission of deposit, a statement showing the amount of such collection, from whom or for what purpose or on what account the same was received, shall be transmitted to the state treasurer. It shall be the duty of the state treasurer to credit the moneys thus received to a special fund, to be known and designated as the "Wisconsin grain and warehouse commission fund." The state treasurer is hereby authorized to transfer from the general fund to the Wisconsin grain and warehouse commission fund, the sum of five thousand seven hundred forty-two dollars and forty-seven cents, this being an amount paid into the general fund by said commission, and representing a profit to the state over and above the necessary expenses of the commission. *Id.* Sec. 1747-43.

Expenses:—It shall be the duty of the Wisconsin grain and warehouse commission to file with the secretary of state

on the first of each month, a correct and true statement of all expenses incurred by said commission durin gthe preceding month, for the salaries allowed the commissioners by law, and all expenses incurred by said commission, or compensation allowed to appointees and employes for such weighing and inspection, the expenses of making and publication of rules for the weighing, inspection and grading of grain, the procurement of all bonds to be given by any and all members of said commission, the chief weighmaster and his assistants, the chief inspector and his deputies, and also for all stationery, postage and other incidental expenses necessarily incurred in carrying out the provisions of sections 1747-1 to 1747-55, inclusive. Said commission may further, from time to time, expend and appropriate out of moneys in the hands of the state treasurer, belonging to said fund, over and above its legal obligations, a sum of money not exceeding twenty-five hundred dollars annually, for the purpose of promoting in a lawful and legitimate manner, the grain trade or market in Superior. Said report furnished the secretary of state, shall contain the names and postoffice addresses of all claimants, together with the amount due each; and the secretary of state shall audit said accounts, payable out of the Wisconsin grain and warehouse commission fund. *Id.* Sec. 1747-44.

Incapacity:—The grain and warehouse commission shall have nó authority to incur any debt in the name of or on account of the state of Wisconsin, nor shall it, or its members, be responsible for any indebtedness incurred in carrying out the provisions of sections 1747-1 to 1747-55, inclusive, but all claims or indebtedness so incurred shall only be payable out of moneys collected for the weighing and inspection of grain and fees provided for upon appeals, and in such other manner as may be provided by said commission in accordance with the provisions of sections 1747-1 to 1747-55, inclusive. *Id.* Sec. 1747-45.

Inspection fees to defray expenses:—The Wisconsin grain and warehouse commission is hereby empowered to fix rates for the weighing and inspection of grain. It being intended in fixing the fees for weighing, inspection and other services performed under sections 1747-1 to 1747-55, inclusive, that they shall be so fixed as to make the work self-sustaining, including the salaries of the members of said commission. *Id.* Sec. 1747-46.

Inspection record:—The chief weighmaster appointed under sections 1747-1 to 1747-55, inclusive, shall keep a correct record of all grain weighed by him, giving the amount of each weight, the number of the car or cars weighed, if any, and the initial letters of the car, and the place where weighed, with date and contents of the car, and also of all grain weighed in the loading of boats or vessels and the date and amount thereof, with the name of the boat or vessel, and shall upon the payment of the weighing charges fixed as provided in sections 1747-1 to 1747-55, inclusive, give under his hand a certificate of the weight of the grain, with the date, amount and kind of grain and where weighed, with the name or initial of the car or boat from or into which the same was weighed, and such certificate shall be admissible in evidence in all actions at law or equity as prime facie evidence of the facts therein contained. *Id.* Sec. 1747-47.

Inspection on cars:—It shall be the duty of the chief inspector of grain, and of any deputy serving under him, to open the doors of any cars containing grain, upon their arrival at the city of Superior, for the purpose of inspecting the same, to first ascertain the condition of any such car or cars and determine whether any leakage has occurred while said car or cars were in transit; also whether or not the end or side doors are properly secured and sealed, making a record of such facts in all cases and recording the same in a proper book to be kept for the purpose. After such examination shall have been duly made and recorded, and the inspection of such grain has been made, it shall be the duty of the said officials to securely close and re-seal such doors as have been opened by them, using a special seal to be provided by said commission, and known as "Wisconsin State Seal." A record of all original seals broken and the time when broken, and also a record of all state seals substituted therefor, and the time when such state seals were substituted, together with a full description of said seals with their numbers, shall be made by said officials. *Id.* Sec. 1747-48.

Railroad police protection:—It shall be the duty of railroad companies operating any line of railroad in the city of Superior, to furnish ample and sufficient police protection at all stations in said city, and in their yards and about their terminal tracks to securely protect all cars containing grain, while the same are in their possession, pending transfer and delivery of the same, and

it shall be the duty of such railroad companies to prohibit and restrain all unauthorized persons, whether under the guise of samplers, sweepers, or under any other pretext whatever from entering or loitering in or about their respective railroad yards or tracks and from entering any cars of grain under their control or removing grain therefrom, and shall employ and detail such number of watchmen as may be necessary for the purpose of carrying out the provisions of this section. *Id.* Sec. 1747-49.

Protection of grain after carrier delivery:—It shall be the duty of all warehousemen operating or controlling elevators and warehouses in the city of Superior and the duty of all persons, firms or corporations, engaged in the manufacture of flour or other grain products within said city to furnish ample and sufficient protection to all grain in cars which may be in their possession and to properly care for all cars of grain consigned to their respective elevators, warehouses, mills or manufactories after delivery of the same has been made by the railroad companies, and in case of shipment of grain in cars from such elevators, warehouses, mills or manufactories the said persons shall fully protect and care for said cars of grain until delivery of the same has been made to the railroad company. *Id.* Sec. 1747-50.

Seal breaking:—Any person other than the chief inspector or his deputies, or a regular employe of the railroad company or warehouseman, whose duty it shall be to have charge of said grain on cars, who shall tamper with or break any seals placed upon such cars of grain shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than ten dollars nor more than one hundred dollars, or by imprisonment in the county jail not less than ten days nor more than ninety. *Id.* Sec. 1747-51.

No delivery before inspection—Inspection fees:—No railway company or common carrier, or any person engaged in the transportation of grain by rail shall deliver to any warehouse or warehouseman required by sections 1747-1 to 1747-55, inclusive, to obtain a license, any car or cars of grain to be unloaded into or stored in such warehouse until such warehouseman has taken out and obtained a license under the provisions of sections 1747-1 to 1747-55, inclusive, nor shall any such grain be delivered until the same shall be inspected and graded as provided in sections 1747-1 to 1747-55, inclusive, and the inspection charges

paid. All of the inspection charges shall be added to the transportation charges of the grain, and shall be paid to the railroad company or common carrier by the warehouseman upon delivery of the grain into the warehouse in addition to the payment of the charges for transportation, and in the usual manner. And any railroad, common carrier or other person who shall violate any of the provisions of this section shall be guilty of a misdemeanor and upon a conviction shall be subject to a fine of not less than one hundred dollars, nor more than five hundred dollars, and shall also be liable to the grain and warehouse commission in damages three times the amount of all inspection charges upon said grain at the maximum rate hereinbefore provided. *Id.* Sec. 1747-52.

Penalties:—Any person who, or corporation which, shall violate any provision of sections 1747-1 to 1747-55, inclusive, or shall fail to perform each and every duty required by any provision hereof, when punishment of penalty shall not otherwise be specifically provided, shall be deemed guilty of a misdemeanor and be subject to a fine of not less than ten dollars nor more than one hundred dollars, and shall also be liable in damages to any and all persons aggrieved thereby for treble the amount of damages suffered. *Id.* Sec. 1747-53.

Flaxseed:—The word "grain" as used in sections 1747-1 to 1747-55, inclusive, shall be construed to include flaxseed, whether flax is particularly mentioned or not. *Id.* Sec. 1747-54.

Salary of commissioners:—The three members of the grain and warehouse commission, provided for in sections 1747-1 to 1747-55, inclusive, shall each give his entire time to the performance of the duties of his position, and shall not engage in any other active business; they shall each receive a salary of two hundred dollars per month, out of the funds or fees collected under the provisions of sections 1747-1 to 1747-55, inclusive. *Id.* Sec. 1747-55.

Minnesota sales void:—All contracts for the sale or purchase of grain upon the basis of grades fixed upon inspection made by any person or persons appointed or employed by or under the railroad and warehouse commission of the state of Minnesota or upon weights fixed or certified by such appointees or employes or by any person in any wise related to or connected

with the board of trade of the city of Duluth, where the grain is to be delivered or weighed in Superior shall be void. *Id.* Sec. 1747-58.

Locus of sale:—In all sales and purchases of grain where the same is to be delivered at any elevator, mill, warehouse or other place in the city of Superior, or where the amount of the purchase price is to be determined by weighing the grain in said city, or where such delivery or weighing either is contemplated or afterwards takes place in said city, such grain shall be deemed to have been bought and sold in said city of Superior within the provisions of this act, and all grain so bought or sold shall be inspected and weighed under the provisions of this act. *Id.* Sec. 1747-59.

Presumption of sale:—All grain delivered from any and all elevators to cars or boats in the city of Superior, shall be presumed to have been delivered upon, or in fulfilment, in whole or in part, of a contract for the sale thereof, and shall subject said grain to weighing and inspection under the provisions of this act at the time of such delivery. But this shall not apply to the use of boats for storage out of the navigation season, provided the grain is afterwards returned to the elevator for inspection and weighing. *Id.* Sec. 1747-60.

Unauthorized weighing—Penalty:—No person who is not the chief weighmaster or a deputy weighmaster under the provisions of chapter 19 of the laws of Wisconsin for the year 1905 shall weigh any grain received into any elevator or mill in the city of Superior or shipped out of such elevator or mill, and any person who shall violate any of the provisions of this section shall be punished by a fine of not less than one hundred dollars for each offense; provided, however, that this section shall not prevent the owner of any grain from, or punish him for, weighing his own grain where such weighing does not in any wise relate to the sale, purchase or delivery or payment for said grain, and is solely for his private use, but the burden of proof in any case to show that such weighing is for such private use shall be upon the defendant. *Id.* Sec. 1747-61.

No receipt for grain not graded:—No person or corporation shall issue any warehouse or elevator receipt for any grain received or stored in any elevator, mill elevator, or mill located in

the city of Superior, unless said grain has been inspected and graded under, and pursuant to, said chapter 19 of the laws of 1905, and any receipt otherwise issued shall be void. *Id.* Sec. 1747-62.

No delivery until fees paid:—No railway company shall deliver to any person, firm or corporation, or to any elevator, warehouse, or mill in the city of Superior, any grain inspected by the grain and warehouse commission for the state of Wisconsin, the chief inspector, or any of his deputies or assistants, until the fees for such inspection are paid as provided in section 33 of said chapter 19, and in case it does so, it shall be liable in damages for three times the amount of the fees so unpaid, to be recovered in an action brought by and in the name of said grain and warehouse commission for the state of Wisconsin. *Id.* Sec. 1747-63.

Refusal to pay charges by warehouseman—Sales:—In case any person, corporation, elevator company or mill company to whom grain is consigned, or to whom grain shall be ordered delivered, shall refuse to pay the inspection charges mentioned in the next preceding section, or shall refuse to receive the grain upon which said charges are declared to be a lien, by reason of the railway company insisting upon payment of such charges, said railway company shall immediately notify the consignor or owner of such grain of such refusal, and collect from him such charges, and in case none of the parties mentioned shall promptly pay said charges, said railway company or common carrier may upon one day's notice, oral, or in writing, or by telegram, sell said grain in the open market in the city of Superior, and out of the proceeds of said sale pay all of the expenses, including said inspection fees, weighing charges and transportation charges, and pay the balance over to the person or persons or corporation entitled thereto. *Id.* Sec. 1747-64.

Seizure on lien—Sale—Foreclosure:—In addition to the remedies provided in said chapter 19 for the collection of inspection and weighing fees, the grain and warehouse commission for the state of Wisconsin may seize and take possession of any and all grain upon which it has a lien for such charges, and hold possession thereof, or sell the same, or it may take a sufficient amount of grain from each car to cover such charges and the ex-

penses of selling the same, and may sell such grain in the open market in the city of Superior after giving not less than ten days' notice of the time and place of sale, either personally or in the manner provided for sales of personal property upon execution in justice court. Said grain and warehouse commission for the state of Wisconsin may also bring an action to foreclose its lien in the usual manner in a court of equity, in which case if the action is brought while the grain is still in the hands of the railway company or common carrier, it shall not be necessary to make any person or corporation a party to said action other than the railway company, in which case the railway company shall notify the owner of said grain, who may if he desires, and upon his own application, be made a party defendant in said action, and the said grain and warehouse commission may foreclose its lien upon any and all grain or upon any number of carloads of grain in the possession of any railroad company in a single action, and this section shall apply to all liens heretofore acquired, and to any and all actions heretofore or hereafter commenced for the foreclosure thereof. *Id.* Sec. 1747-65.

Penalty for sale without inspection—Locus of sale:—No person, firm or corporation shall sell, or offer for sale in the city of Superior, any grain until the same has been inspected under the supervision of the grain and warehouse commission for the state of Wisconsin, by its chief inspector, his deputy or assistant, or deliver any grain in said city in pursuance of any contract of sale made elsewhere to any person, corporation, elevator, mill, or from any such elevator to cars or boats, until such inspection shall be made, and any person or corporation violating this section, or participating in any such sale or delivery, or by receiving such grain, shall be punished by a fine of not less than one hundred dollars for each offense, or imprisonment not exceeding ninety days, or by both such fine and imprisonment in the discretion of the court. Every sale, offer for sale, or delivery of grain within the meaning of this section, shall be deemed to be made within the city of Superior notwithstanding the contract may be made elsewhere if such grain shall, at the time of making the same, be within the city of Superior, or thereafter delivered in said city. In determining whether there is a delivery in the city of Superior, no delivery to a railway company or common carrier outside of the city of Superior shall be deemed a delivery

to the purchaser unless the exact amount of the purchase price has been ascertained and paid. Provided that this section shall not prohibit the making of any executory contract for the delivery of grain if such contract shall provide for the inspection and weighing of the grain under the supervision of the grain and warehouse commission for the state of Wisconsin. *Id.* Sec. 1747-66.

Sale, storage or delivery, when prohibited:—No person or corporation shall offer for sale or sell or deliver any grain in the city of Superior, or receive or store grain in any elevator or warehouse in said city, or deliver the same from any such elevator or warehouse under or upon any inspection or grading made or fixed by any appointee or employe of the railroad and warehouse commission of the state of Minnesota, or upon weights given or certified by any such appointee or employe, or upon any other inspection, grading or weighing, than provided in said chapter 19, and any person violating this section shall be guilty of a misdemeanor and punished as provided in section 53 of said chapter. *Id.* Sec. 1747-67.

Railroad warehouses:—Every elevator or warehouse located in the city of Superior owned or held by any railway company, either in its own name or in the name of any other person, persons or corporation, for its use, is hereby declared and shall be deemed to be a public warehouse within the meaning of this act so far as to require the railway company owning or holding the same, or any lessee thereof, to receive and store, without discrimination, and subject only to the charges provided in said chapter 19, of all grain carried over the line of such railway company whether by said company directly or by any other railway company operating its line whether as lessee or otherwise, and delivered at Superior. *Id.* Sec. 1747-68.

Railroad need not give bond, etc.:—If any such elevator or warehouse shall be operated directly by the railway company owning or holding the same, such company shall not be obliged to give bonds or take out license, but it shall within sixty days make and file with the grain and warehouse commission a written declaration stating its purpose to operate said elevator or warehouse pursuant to the laws of Wisconsin and the period for which it will so operate the same, or in case it has heretofore or shall

hereafter lease said warehouse or elevator, then it shall make and file a like written declaration stating to whom and for what period said elevator or warehouse has been leased, with a copy of such lease. *Id.* Sec. 1747-69.

Elevator lessees:—In case any person, firm or corporation has heretofore leased, or shall hereafter lease, or become the lessee or occupant in any manner whatsoever of any elevator or warehouse located in the city of Superior belonging to any railway company, said lessee or occupant shall immediately upon the passage of this act, or upon the commencement of his leasehold term, if created subsequently to the passage hereof, become a public warehouseman and subject to all of the provisions of chapter 19 except so far that if unable to furnish storage for all persons applying for the same, he shall give preference to the storage of all grain received in Superior over the line of the railroad company owning said elevator or warehouse. *Id.* Sec. 1747-70.

Setting out cars for inspection—Penalty:—Every railway company transporting grain into the city of Superior shall, before delivering the same to the consignee, or any other person or corporation, or setting the same in upon any track leading to any elevator, warehouse or mill, and before delivering the same to any terminal company or any other carrier, set out all such grain upon some one or more of the tracks in its yard convenient for the chief inspector of the grain and warehouse commission for the state of Wisconsin, his deputies and assistants, to inspect the same, and shall set out and separate the cars of grain destined to be delivered in Superior from any passing through in transit, and shall furnish said chief inspector a list with initials and numbers of cars, names of consignor and consignee, from where shipped, and where and to whom to be delivered, and shall furnish full and sufficient opportunity for such inspection of any and all grain delivered in Superior before such delivery whether to be delivered upon the original consignment or upon disposition subsequently given, and any railway company which shall violate any or fail to fully comply with all the provisions of this section shall forfeit the sum of one hundred dollars for each carload of grain, to be recovered in an action brought in the name of the grain and warehouse commission for the state of Wisconsin. *Id.* Sec. 1747-71.

No water or rail shipment until inspection—Penalty:—No person or corporation shall deliver any grain from any elevator or warehouse in the city of Superior to any boat or car until the grain has been inspected, graded and weighed under the supervision of the grain and warehouse commission of the state of Wisconsin, and the fees for such inspection, grading and weighing paid on demand contemporaneously with such delivery, and any person or corporation violating this section by making such delivery or participating therein or in receiving such grain shall be punished by a fine of not less than one hundred dolllars, nor more than five hundred dollars or by imprisonment not exceeding six months, or by both such fine and imprisonment in the discretion of the court. *Id.* Sec. 1747-72.

Penalty:—Any person who shall resist or interfere with the chief inspector, or any of his deputies or assistants, or the weighmaster, or any of his deputies or assistants, while engaged in the lawful performance of his duty shall be punished by imprisonment in the county jail not more than six months, or by fine not exceeding two hundred dollars, or by both such fine and imprisonment in the discretion of the court. *Id.* Sec. 1747-73.

Construction:—A liberal construction shall be given to all of the provisions of this act and of chapter 19 of the laws of 1905 to the end that an honest inspection, grading and weighing of grain between any and all sellers and purchasers thereof in the market at Superior, and of all grain received, stored or delivered to or by any elevator in said city, and to prevent fraud therein. *Id.* Sec. 1747-79.

Same:—In the passage of this act and of chapter 19, laws of 1905, it is hereby declared to be the intention of the legislature that each section thereof is enacted independent of every other section thereof and not as compensation for or an inducement to the passage of any other section. *Id.* Sec. 1747-80.

Connection with tracks:—The owner of any elevator, warehouse, manufacturing plant or mill, or of any lumber, coal or wood yard located within one-half mile of any railroad or any sidetrack thereof may, at his own expense, construct a spur track from any such elevator, warehouse, manufacturing plant, mill or yard to a point on the right of way within the terminal or yard limits of any such railroad, and the railroad shall connect

the same with its tracks within such terminal or yard limits. Such spur track shall at all times be under the control and management of, and be kept in repair and operated for such owner or his assigns by such railroad, but the actual cost of so maintaining and operating shall be paid monthly by the owner thereof, and in case of neglect to so pay the same upon demand the obligation of this section upon any such railroad shall cease until such charges are paid. And no such spur track hereafter constructed or which has heretofore been constructed under the provisions of this section shall be removed without first having given the parties owning such elevator, warehouse, manufacturing plant, mill or yard six months' notice, and no removal shall be made except for good cause shown. *Id.* sec. 1802.

Warehouse sites:—Any persons proposing to erect and construct a public elevator or public warehouse to be operated for hire, for the purchase, sale, storage or shipping of grain, or other personal property, to be transported upon any railroad, shall be furnished by such railroad, at a reasonable rental, a site upon its vacant right of way or depot grounds, within the yard limits of any station or terminal of such railroad; and the railroad commission shall, upon application, if it shall deem the public interest so requires, by order, direct the railroad to furnish such site, and in case of disagreement the commission shall determine the rental therefor. Elevators and warehouses erected under the provisions of this section shall be deemed to be public elevators or warehouses and shall be subject to such rules and regulations as to charges and the manner of conducting business as the commission shall prescribe: *Provided,* That this section shall not apply to cities. *Id.* sec. 1802a.

Standard for grain:—No person shall sell, buy or receive in store any grain at any weight or measure per bushel other than the standard weight or measure per bushel fixed by law; and for any violation hereof the offender shall forfeit not less than five nor more than fifty dollars. *Id.* Sec. 1670.

Grain tester, how used:—No person shall determine the grade of any grain which is bought or received in store at any mill, elevator, warehouse or storehouse by the use of any grain tester that is not sealed in accordance with the United States standard of measure and which sealer is not in accordance therewith at the time it is used. When grain is tested at the

instance of the seller the tester shall be filled by pouring the grain into it from a scoop or a similar vessel, and when the tester is filled it shall be struck or leveled with three zigzag movements of a straight edge. Any person who shall violate the provisions of this section and thereby cheat or defraud the seller or buyer of any grain shall be punished as is provided in section 4432. *Id.* Sec. 1670a.

False weights and measures:—Any person, who, by himself or by his servant or agent or as the servant or agent of another, shall use or retain in his possession any false weight or measure, or any weight or measure, or weighing or measuring device, to be used in the buying or selling of any commodity or thing which has not been sealed by a sealer of weights and measures within one year; or any person who, by himself or by his servant or agent, or as the servant or agent of another, shall sell or offer or expose for sale or keep for the purpose of sale, less than the quantity he represents; or who by himself, or by his servant or agent, or as the servant or agent of another, shall use any false weight or measure in buying or selling any commodity or thing, or shall sell or offer or expose for sale or keep for the purpose of sale any commodity in a manner contrary to law; or any person, who, by himself or by his servant or agent or as the servant or agent of another, shall sell or offer to sell or have in his possession for the purpose of selling any device or machine to be used or calculated to falsify any weight or measure, shall be punished by imprisonment in the county jail not less than ten days nor more than three months, or by a fine of not less than twenty-five dollars nor more than one hundred dollars.

2. Or any person who wilfully, with intent to cheat or defraud the buyer or seller of electric current, gas, water, or steam, shall make or cause to be made or aid in the making of any electric conductor, gas pipe, water pipe, steam pipe, or other instrument or contrivance, or any connection as to conduct or supply or intended to conduct or supply electric current gas, water, or steam to any lamp or motor or machine or burner or orifice or appliance from which such electricity, gas, water, or steam may be consumed or utilized, without passing through or being registered by a meter; or any person who shall wilfully use a false meter for the measurement of electric current, gas, water, or steam in the buying or the selling of the same; or who shall wil-

fully obstruct or interfere with the working of any meter used for such purposes, so as to cause or be intended to cause a false registration of the amount of electric current, water, gas, or steam consumed with the intent to cheat or defraud the seller or buyer of such electric current, gas, water, or steam, shall be punished by imprisonment in the county jail not more than one year or by a fine not exceeding five hundred dollars; but in case the amount of damages occasioned by such cheat or fraud shall not exceed twenty dollars, he shall be punished by imprisonment in the county jail not more than three months or by fine not exceeding one hundrd dollars; and in computing the amount of damages occasioned, the value of such electric current, water, gas, or steam shall be the regular current price therefor, charged to the consumer by the seller thereof.

3. But nothing contained in sections 1658 to 1670, inclusive, shall prohibit the use by any person, or by his servant or agent, in good faith, of any unsealed weight or measure or weighing or measuring device purchased or acquired by such person after the last visit of a sealer to such person for the purpose of inspection and sealing of weights and measures, or any sealed weight or measure or weighing or measuring device in his possession after the expiration of one year next after the last inspection and sealing thereof, provided the said person shall have notified the city sealer in cities subject to the provisions of section 1661, or the superintendent of weights and measures, respectively, in writing, signed by said person, of the fact that he has such weight or measure or weighing or measuring device, giving the number thereof and a general description of the same, and the place where the same may be found for the purpose of inspection, and shall have received a written acknowledgment of said notice, signed by such city sealer or superintendent of weights and measures. *Id.* Sec. 4432.

DECISIONS AFFECTING WAREHOUSEMEN

A.

Bailment—When property belongs to another, bailee may refuse to deliver to his bailor—Express company—Real owner may recover prior to delivery to consignee:—Where property was delivered to an express company for carriage and delivery,

and the consignor was not the true owner thereof, it was *held*, that while the general principle is true that it is the duty of such a company to deliver property personally to the consignee and that it would be liable in case of wrongful delivery, that there are, nevertheless, many exceptions to this rule and one of them is that the true owner of the property may enforce his right to it as against the consignor or consignee of the carrier, or against the bailor or bailee, whenever he sees fit to do so, before its delivery as directed. His right is paramount to the claim of all others, no matter what may be their relations to each other, unless it is lost, or, for the time being, suspended by his own conduct of surrender or estoppel. So also a warehouseman receiving goods for the consignee who had actual possession of them, to be kept for him, may, nevertheless, refuse to deliver them if they are the property of another and the latter prohibits their redelivery. *Wells* v. *American Express Co.*, 55 Wis. 23.

Same—Bailee cannot acquire adverse title to his bailor:—Where property intrusted to a bailee was unlawfully seized and sold and the bailee purchased the same, it was *held* that he thereby acquired no title to the property. The rule is that one who has received property from another as his bailee or agent must restore or account for the property to him from whom he received it. Neither can the bailee recover the amount which he paid at such sale, it not appearing that the owner of the property authorized such payment. *Enos* v. *Cole*, 53 Wis. 235; *Nudd* v. *Montanye*, 38 Wis. 511.

Same—Executory contract of—Possession:—An executory contract of bailment does not give the bailee named in the contract the right of possession in the property; but such right accrues to the bailee on delivery. *Crosby* v. *German*, 4 Wis. 373.

Same—Bailee cannot deny bailor's title:—A bailee is at all times at liberty to show that his bailor has parted with his interest in the property subsequent to the bailment. But such bailee cannot at law dispute the original title of his bailor. *Nudd* v. *Montanye*, 38 Wis. 511.

Same—Prima facie case—Burden of proof—Evidence:—When the bailment is such that the property is in the exclusive possession of the bailee, away from the bailor, and is returned

in a damaged condition, and it is shown that the injury is such as does not ordinarily occur without negligence, the proof of these facts constitutes a *prima facie* case against the bailee and puts him on his defense. In other words, when such a showing is made, the plaintiff has made a *prima facie* case under the rule that the burden is on the party asserting negligence; and the law will then presume negligence to have been the case, and casts upon the defendant the burden of showing the loss did not occur through his negligence, or, if he cannot affirmatively do this, that, at least, he exercised a degree of care sufficient to rebut the presumption of it. On the trial of a case for the injury of a horse intrusted to another, the defendant was permitted, against plaintiff's objection, to testify that a certain person had told him that it was an old founder which appeared upon the horse and to drive it home. Although it appeared that the person who told the bailee this had had forty years' experience in the care and handling of horses, it was *held* that it was clearly error to allow the defendant to testify to this fact, as it was an attempt to estabilsh his defense by hearsay evidence. *Hildebrand* v. *Carrol,l* 106 Wis. 324.

Same—Same—Same—Presumption of negligence, when it arises:—Where goods are stored with a common carrier or warehouseman, and there is a failure to deliver upon proper demand, the owner need not show specific acts of negligence to make a *prima facie* case entitling him to recover. To escape liability, the burden is upon the defendant to show that the failure to deliver did not result through any negligence on its part. Defendant was unable to give any explanation of how the loss occurred. Under such circumstances a presumption of negligence arises, sufficient to entitle plaintiff to recover. *Milwaukee Mirror, etc., Works* v. *Chi., M. & St. P. Ry. Co.,* 134 N. W. 379, 381.

Conversion—Disregard of orders to ship in a certain manner: —In an action against a warehouseman for the conversion of a quantity of flour, it appeared that the flour was stored in the defendant's warehouse and that a properly authorized agent of the plaintiff instructed the defendant to ship the same *by rail* to a certain point. It further appeared that the defendant disregarded this order and shipped the flour *by steamer* through

the lakes, and that the flour was lost while in transit. It was *held* that the disregard by the defendant of the instruction of the plaintiff to ship the flour by rail constituted a conversion thereof for which the defendant was liable. *Graves et al.* v. *Smith*, 14 Wis. 5; *Young* v. *Miles*, 20 Wis. 615.

B.

Ordinary care—Definition:—A warehouseman is bound to exercise ordinary care and diligence in the safekeeping of goods intrusted with him. Such care may be said to be that which men of common prudence generally bestow upon their own property similarly situated. *Dimmick* v. *Milwaukee & St. P. Ry. Co.*, 18 Wis. 471.

Same—Not liable in the absence of negligence—Burden of proof:—A warehouseman is not liable for the loss or damage of property intrusted to him resulting from fire or other causes, in the absence of negligence or fraud on his part. The burden of proof to show such negligence is upon the plaintiff. *Dimmick* v. *Milwaukee & St. P. Ry. Co.*, 18 Wis. 471; *Whitney* v. *Chicago & N. Ry. Co.*, 27 Wis. 327; *Lemke* v. *Chicago, M. & St. P. Ry. Co.*, 39 Wis. 449; *Schmidt* v. *Chicago & N. Ry. Co.*, 90 Wis. 504.

H.

Storage charges—Foreclosure for, must be in accordance with statute:—Unless a warehouseman proceeds to foreclose his lien for nonpayment of storage charges in the manner prescribed by statute, he is guilty of conversion. *Devlin* v. *Wis. Storage Co.*, 147 Wis. 518.

I.

Commingling of wheat—Subsequent separation—Effect thereof—Replevin:—Plaintiff stored a large quanaity of wheat in a warehouse with the understanding that it might be mingled with other wheat of similar grade. Subsequently the warehouseman sold all of the wheat with the exception of a quantity equal to that owned by the plaintiff. The warehouseman then sold this remaining wheat. On the above stated facts it was *held* that when there remained in the warehouse the quantity of wheat equal to or slightly less than that claimed by the plaintiff that this identical wheat became the plaintiff's property, and that the subsequent sale thereof by the warehouseman constituted a

conversion and that the plaintiff could recover possession of the wheat in an action of replevin against the purchaser. *Young* v. *Miles et al.*, 23 Wis. 643. See also same case, 20 Wis. 615.

Same—Effect of mixture with grain of better quality without bailor's consent:—It appeared from the evidence that a warehouseman had kept the grain of a depositor in a separate bin, but had previously mingled the same with other grain of a superior quality, thus enhancing its value. In an action to recover the grain or its value, the court instructed the jury that the interest of such depositor immediately attached to the mixture and that he would be entitled to an equal number of bushels thereof. *Easton* v. *Hodges*, 18 Fed. Rep. 677.

M.

Pledge—Requisites:—To constitute a valid pledge, there must be a transfer of possession to the pledgee, actual or constructive. In the case of a pledge, a lien is created, to the existence of which possession is absolutely necessary; in this important respect a pledge differs from a mortgage. In the former, the legal title remains in the pledgor while in the latter the title passes to the mortgagee. *Seymour* v. *Colburn*, 43 Wis. 71; *Geilfuss* v. *Corrigan*, 95 Wis. 651.

Pledge—Delivery of possession essential:—Delivery of possession is the very life of a valid pledge. No mere agreement respecting possession can create it. The contract of pledge can not exist outside of the fact of change of possession. The pledgor must dispossess himself openly, completely, unequivocally, and without deceptive combinations which lead third persons into error as to the real possessor of the thing. And the pledgee must take and maintain an open, exclusive and unequivocal possession. *Security Warehousing Co.* v. *Hand*, 143 Fed. Rep. 32, 41; affirmed in 206 U. S. 415.

Same—Same—Facts held not to constitute change of possession:—A warehouse company leased premises of a knitting company and certain employees were in the employ of both companies. No signs were displayed by the warehouse company, nor did it seek to obtain business from the public. Goods were placed on premises really occupied by knitting company, although in form leased by it to warehousing company, and so-called warehouse receipts issued against such goods and negotiated.

Substantially the same possession was exercised by the knitting company after the issuance of the receipts as it had exercised before. It was *held* this was not sufficient to constitute a change of possession. Distinguishing *Union Trust Co.* v. *Wilson,* 198 U. S. 530. *Security Warehousing Co.* v. *Hand,* 206 U. S. 415, affirming 143 Fed. Rep. 32.

Q.

Warehouse receipt—Must be issued by a warehouseman:— In order that a receipt shall be a warehouse receipt in this state it must be issued by one regularly engaged in the business of warehousing. The court will not take judicial notice that one is a warehouseman, but this fact must be proved by the proper evidence. *Shepardson* v. *Cary, Exec.,* 29 Wis. 34; *Geilfuss* v. *Corrigan,* 95 Wis. 651.

Same—Are "negotiable instruments"—Pledged by factor—Pass title to the property—"Factors' Act" considered—Effect of notice to vendee or pledgee:—A factor was intrusted with the possession of warehouse receipts, the property represented thereby belonging to the plaintiff, and had deposited them with the defendant bank as security for the amount which he owed it by having overdrawn his account. The factor subsequently died insolvent and the defendant sold the property represented by the receipts and applied the proceeds toward the account owed it by the factor. The plaintiff brought this action against the bank on the ground that it was a fraud on the part of the factor to pledge the receipts and that no title had passed thereby. It was *held,* under the Factors' Act of this state, that the factor had authority to pledge receipts in his possession and that warehouse receipts were negotiable under the laws of this state as promissory notes or bills of exchange, giving to the holder, under all ordinary circumstances, imperative presumption of title with power of disposal; that a principal voluntarily suffering them to be in the hands of a factor, holds out the factor as owner, with unlimited authority to dispose of them; and that such factor may bind his principal, contrary to his instructions, by pledge of securities negotiable at common law. A factor's sale or pledge of a negotiable warehouse receipt, in violation of his instructions, will not bind his principal, if the vendee or pledgee has notice that the factor holds the title for his principal

and sells or pledges in violation of the principal's instruction. *Price* v. *The Wisconsin Marine & Fire Ins. Co.*, 43 Wis. 267. See *Victor Sewing Machine Co.* v. *Heller*, 44 Wis. 265. *Dicta in Hale* v. *Dock Co.*, 29 Wis. 482, criticised.

Same—Effect of Transfer:—The execution and delivery by a warehouseman of his receipt carries the vendor's title in constructive possession of the property to the vendee, who, or the party claiming under him, as the holder of the receipt, is thenceforth, in cases free from fraud or bad faith, regarded as the owner of the property for all purposes. The warehouseman becomes the mere bailee for the benefit of the vendee, or other holder of the receipt, and subject to his order and control. The doctrine of *Shepardson* v. *Greene*, 21 Wis. 546, criticised. *Shepardson* v. *Cary, Exec.*, 29 Wis. 34; *Price* v. *Wisconsin, Marine and Fire Ins. Co.*, 43 Wis. 267.

Same—Same—Effect of description in the receipt—When goods in barrels or sealed packages—Warehouseman not estopped to deny contents:—It appeared that a warehouseman had given a receipt for certain barrels of "mess pork," by the terms of which they were to be delivered to bearer; it further appeared that the receipt was afterwards purchased by one entirely in good faith and presented to the warehouseman. It was then shown that the barrels stored did not contain "mess pork," but salt; thereupon the assignee of the receipt refused to receive the same. It was *held,* on the above stated facts, that the warehouseman was not estopped in cases where goods were enclosed in barrels or other sealed packages, to deny that their contents were as stated in storage receipts, and further, that the tender by the warehouseman of the identical barrels in store exonerated him from further liability. *Hale* v. *The Milwaukee Dock Co.*, 23 Wis. 276. See same case, 29 Wis. 482.

Same—Extent of negotiability—Object of statute:—Under the statutes of this state the transfer of a warehouse receipt "by delivery, with or without indorsement thereof," transfers no more than the property in the goods—it does not transfer the contract. Warehousse receipts and bills of lading do not possess the "negotiable" character of commercial paper. The word "negotiable," as used in the act of 1860, ch. 340, and the amendment, sec. 1, ch. 73, Laws of 1863, is evidently not

intended to be interpreted in the same manner as when applicable to a bill of exchange. It is intended only to mean the passing of the property in the goods themselves. *Hale et al.* v. *The Milwaukee Dock Co.*, 29 Wis. 482. But see *Price* v. *Wisconsin Marine & Fire Ins. Co.* 43 Wis. 267, in which certain dicta in the above case is criticised.

Same—As collateral security—Not affected by statute relating to chattel mortgages:—Where a warehouse receipt was pledged as collateral security, it was held that the relations of the parties were not affected by the statute regulating the making and filing of mortgages of personal property. *Shepardson* v. *Cary, Exec.*, 29 Wis. 34; *Rice* v. *Cutler*, 17 Wis. 351.

Same—Same—Must be valid "warehouse receipts":—In order to validly pledge property represented by a warehouse receipt it must be a receipt issued by a warehouseman and in accordance with the terms of the statute. Where, therefore, one attempted to pledge property represented by "storage warrants," it was *held* that the pledgee took no title to the property represented threby as against creditors of the pledgor. *Geilfuss* v. *Corrigan*, 95 Wis. 651.

Same—Pledgee may maintain trover:—Where one holds a warehouse receipt as collateral security, such pledgee may maintain trover against the warehouseman for the recovery of the wheat or its value. *Easton* v. *Hodges*, 18 Fed. Rep. 677.

Same—As collateral:—A bank which received such storage warrants in good faith from a mining company as collateral, but which never had any other possession of the iron than that given by the transfer of the warrants, and never notified the furnace company of its claim thereto, but permitted the latter to dispose of the iron on hand and substitute other iron in its place—acquired no lien on the iron as pledgee as against third persons, even conceding that the title thereto passed to the mining company. *Id.*

False warehouse receipt—Replevin cannot be maintained by holder of—Evidence:—Where a warehouseman gave a receipt for wheat which he did not receive, and afterwards the quantity which he actually had was divided amongst the respective depositors, an action of replevin brought by the assignee of the

fictitious receipt could not be maintained when, under it, one of those portions was seized. Evidence offered to show that the wheat in question was assigned to the defendant was objected to by the plaintiff in the replevin suit, but such objection was properly overruled. The plaintiff had shown no title in himself. So, also, evidence was admissible to show that the receiver of the fictitious certificate had never deposited any wheat in the warehouse. The defendants in this case were the assignees of the original warehouseman and were not responsible, unless it could be shown that wheat was deposited which had come into their possession. *Jackson* v. *Hale et al.*, 14 How. 525.

CHAPTER L.

WYOMING.

LAWS PERTAINING TO WAREHOUSEMEN.

Warehousemen not to issue receipts until goods received:—No warehouseman, wharfinger, or other person shall issue any receipt or other voucher for any goods, wares, merchandise, grain or other produce or commodity to any person or persons, purporting to be the owner or owners thereof, unless such goods, wares, merchandise or other produce or commodity shall have been *bona fide* received into store by such warehouseman or wharfinger, or other person, and shall be in store and under his control at the time of issuing such receipt. Wyoming Compiled Stats. 1910, sec. 6014.

Not to issue receipts as security unless invested with ownership:—No warehouseman, wharfinger or other person shall issue any receipt or other voucher upon any goods, wares, merchandise, grain or other produce or commodity, to any person or persons, as security for any money loaned, or other indebtedness, unless such goods, wares, merchandise, grain or other produce or commodity shall be at the time of issuing such receipt the property of such warehouseman or wharfinger, or other person, and shall be in store and under his control at the time of issuing such receipt or other voucher as aforesaid. *Id.* sec. 6015.

Not to issue second receipt for same goods:—No warehouseman, wharfinger or other person shall issue any second receipt for any goods, wares, merchandise, grain or other produce or commodity, while any former receipt for any such goods or chattels as aforesaid, or any part thereof, shall be outstanding and uncancelled. *Id.* sec. 6016.

Not to sell or transfer goods without consent of owner:—No warehouseman, wharfinger or other person shall sell or incumber, ship, transfer or in any manner remove beyond his

immediate control any goods, wares, merchandise, grain or other produce or commodity, for which a receipt shall have been given as aforesaid, without the written assent of the person or persons holding such receipt. *Id.* sec. 6017.

Penalty for violating four preceding sections:—Any warehouseman, wharfinger or other person who shall violate any of the foregoing provisions relating to warehousemen shall be deemed a cheat and be subject to indictment and, upon conviction, shall be fined in any sum not more than one thousand dollars and imprisoned in the penitentiary not more than five years, and all and every person aggrieved may have and maintain an action on the case against the person or persons violating any of the foregoing provisions relating to warehousemen, to recover all damages, immediate or consequential, which he or they may have sustained by reason of such violation as aforesaid, before any court of competent jurisdiction, whether such person shall have been convicted as a cheat under the foregoing sections or not. *Id.* sec. 6018.

Common carriers and warehousemen—Liens:—Every common carrier of goods or passengers who shall, at the request of the owner of any personal goods, carry, convey or transport the same from one place to another, and any warehouseman or other person who shall safely keep or store any personal property at the request of the owner or person lawfully in possession thereof, shall, in like manner, have a lien upon all such personal property for his reasonable charges for the transportation, storage or keeping thereof, and for all reasonable and proper advances made thereon by him in accordance with the usage and custom of common carriers and warehousemen. *Id.* sec. 3756.

Appointment of appraisers:—If any such charges for which a lien is given by the preceding sections of this chapter be not paid within thirty days after the same becomes due and payable, the mechanic or other person to which such lien is given may apply to any justice of the peace of the county wherein the property on which the lien is claimed is, to appoint appraisers to appraise such property. Such justice shall thereupon appoint by warrant, under his hand, three disinterested householders of the county to appraise such personal property. *Id.* sec. 3757.

Oath and duty of appraisers:—The appraisers so appointed shall be sworn by the justice to well and faithfully appraise and value all such personal property, and shall thereupon proceed to view and appraise the same, and shall return appraisement, wherein shall be set down each article separately, to the justice by whom they were appointed, within ten days after their appointment. *Id.* sec. 3758.

Notice of sale—Sale and application of proceeds:—After such appraisement is made, the person to whom such lien is given by the foregoing sections of the chapter, shall give ten days' prior notice of the time, place and terms of sale, together with a description of the property to be sold. Such notice shall be personally served upon the owner, or the person from whose possession such property was received, if such owner or person reside within the county; if not, by publication in some newspaper published in the county wherein the person attempting to enforce his lien resides (or if there be no such newspaper, then by posting in three public places within such county for at least four weeks), and shall transmit by mail to the owner, at his usual place of abode, if known, a copy of such notice, the notice being personally served, or the service being complete after four weeks, the party claiming a lien may proceed to sell all such personal property, or as much thereof as may be necessary to pay his claim, at public auction, for cash in hand, at any public place within such county, named in such notice, between the hours of 10 a. m. and 4 p. m. of the day appointed; and from the proceeds may pay the reasonable costs of such appraisement, notice and sale, and his reasonable charges for which he hath his lien. The residue of the property unsold, he shall surrender unto the owner. *Id.* sec. 3759.

Requisites of sale:—No such sale shall be made for less than two-thirds of the appraised value of the article sold, nor except upon due notice, as required by the preceding section. Every such sale made in violation of the provisions of this section shall be absolutely void. *Id.* sec. 3760.

Lien holder may purchase:—At any such sale, the person to whom such lien is given may become the purchaser. *Id.* sec. 3761.

Adjournment—Bill of sale:—In any case where the property to be sold cannot conveniently be sold in one day, the sale may be continued from day to day, by public outcry, at the place of sale. Upon the completion of such sales, the person to whom the lien is given hereby shall cause a bill of sale thereof to be filed with the justice of the peace before whom the appraisement was had, in which shall be set down the sum for which each separate article of property was sold, and the name of the purchaser. The justice shall record such bill of sale in his docket and preserve the original thereof, together with the appraisement. *Id.* sec. 3762.

Right of action preserved:—Nothing herein contained shall be so construed as to take away the right of action of the party to whom such lien is given for his charges, or for any residue thereof at the sale of such property. *Id.* sec. 3763.

Clerk and crier of sale:—At any such sale, the person to whom such lien is given, as herein provided, may appoint a clerk and crier. *Id.* sec. 3764.

Fees of appraisers:—Appraisers appointed under the provisions of this chapter shall receive three dollars per day; justices of the peace shall receive for each warrant of appraisement, twenty cents per one hundred words, and the like fees for recording each bill of sale. Clerks and criers at sales made under the provisions hereof shall receive each three dollars per day. *Id.* sec. 3765.

Chattel mortgages subject to liens:—No mortgage on personal property shall be valid as against the rights and interests of any person entitled to a lien under the provisions of this chapter. *Id.* sec. 3766.

Timber liens to be paid pro rata:—All lien claims for labor performed in cutting or manufacturing railroad cross ties, wood, poles or lumber, or for doing any labor in reference thereto, shall be concurrent liens upon the same, and shall be paid, *pro rata*, out of the proceeds rising from the sale thereof, if the same shall be sold. *Id.* sec. 3767.

Identification of property not required in timber liens:—Persons entitled to a lien for labor performed in cutting or manufacturing any railroad cross ties, wood, poles or lumber shall not be required to identify any particular tie or ties, or

sticks, poles or boards, but may maintain their lien against any or all of that class of property owned and held by the person or persons from whom their pay for such labor is due, and may seize and sell the same as provided in this chapter. *Id.* sec. 3768.

When lien not to affect bona fide purchasers:—No lien upon personal property shall be valid as against an innocent and *bona fide* purchaser unless the person having the right of such lien shall notify said purchaser before he makes payment for such property of the existence of such lien, in which case the purchaser shall be responsible to the person having such lien claim against said property for the full amount of his claim, and all legitimate costs and expenses, and payment made on such lien claim shall apply on payment for such personal property. *Id.* sec. 3769.

DECISIONS AFFECTING WAREHOUSEMEN

B.

Warehousemen—Shipping customers' goods "released"—Binding on owner, when:—A storage company was employed to pack and ship household goods, no directions being given as to how to ship and nothing being said about freight rates. It shipped the same at a reduced rate and signed an agreement releasing railroad from liability beyond a stated amount. *Held* that where the owner of goods directs his agents to ship the same, without further directions or restrictions, the law implies authority in the agent to make a reasonable contract with the carrier, although such contract may limit the carrier's liability. If such contract is lawful, the principal is bound thereby. *Oregon Short Line Ry. Co.* v. *Blyth*, 118 Pac. 649. Rehearing denied, 119 Pac. 875.

H.

Lien—Depositor must be in lawful possession of property:—By virtue of sec. 2846, Revised Statutes of 1899, any warehouseman or other person is entitled to a lien on property who shall safely keep the same at the request of the owner or of the person lawfully in possession thereof. Where, therefor, it was stipulated between the parties to a suit that the plaintiff was in lawful possession of the property at the time when deposited

with the defendant, it was *held* that the defendant's lien for charges attached under this statute. *Kimball Co.* v. *Payne et ux.*, 9 Wyo. 441.

Same—If entitled to storage charges lien attaches—Need not be a "warehouseman":—In a case where one stored goods for another, which was remanded for a new trial, it was *held* that if the defendant could show that he was entitled to any charges whatever for his care of the goods, that his lien for charges would attach thereto under sec. 1471 of the Revised Statutes, 1887, being sec. 2486 of the Revised Statutes of 1899. It is not necessary that the person earning the storage charges be a warehouseman in the strict technical sense; a company engaged in a general mercantile business may come within its provisions if it has earned storage charges. *Knight et al.* v. *Beckwith Commercial Co.*, 6 Wyo. 500; *Kimball Co.* v. *Payne et ux.*, 9 Wyo. 441.

CHAPTER LI.

Territorial Possessions.

ALASKA.

LAWS PERTAINING TO WAREHOUSEMEN.

The Uniform Warehouse Receipts Act is in force in Alaska. It was approved April 28, 1913, to take effect January 2, 1914. Sess. Laws of Alaska 1913, Chap. 65, page 196. Also this Vol. page 1.

Lien of carriers, storers of merchandise, and agisters of cattle:—Any person who is a common carrier, or who shall, at the request of the owner or lawful possessor of any personal property, carry, convey, or transport the same from one place to another, and any person who shall safely keep or store any grain, wares, merchandise, and personal property at the request of the owner or lawful possessor thereof, and any person who shall pasture or feed any horses, cattle, hogs, sheep, or other live stock, or bestow any labor, care or attention upon the same at the request of the owner or lawful possessor thereof, shall have a lien upon such property for his just and reasonable charges for the labor, care, and attention he has bestowed and the food he has furnished, and he may retain possession of such property until such charges be paid.

Carter Code, sec. 277; Charlton Code, sec. 277. *Bailey* v. *Davis* (23 Pac. Rep., 881); *Tobin* v. *Portland Flouring Mills Co.*; *Sharp* v. *Johnson* (63 Pac. Rep., 485). (68 Pac. Rep., 749.)

Comp. Laws Terr. of Alaska, 1913, sec. 706.

Poceedings to enforce such liens:—If such just and reasonable charges be not paid within three months after the care, attention, and labor shall have been performed or bestowed, or the materials or food shall have been furnished, the person having such lien may proceed to sell at public auction the property mentioned in the last two sections, or a part thereof sufficient to pay such just and reasonable charges. Before selling, he

shall give notice of such sale by advertisement for three weeks in a newspaper published in the precinct, if there be such publication, or by posting up notice of such sale in three public places in the precinct, one of which shall be the post-office, or adjacent thereto, for three weeks before the time of such sale, and the proceeds of such sale shall be applied, first, to the discharge of such lien, and the costs of keeping and selling such property, and the remainder, if any, shall be paid over to the owner thereof: *Provided*, Nothing herein contained shall be construed as to authorize any warehouseman to sell more of any wool, wheat, oats, or other grain than sufficient to pay charges due the warehouseman on such wool, wheat, oats, or other grain; *And provided further*, If any such warehouseman shall sell, loan, or dispose of in any manner, contrary to the provisions of this chapter, without the consent of the owner thereof, any such wool, wheat, oats, or other grain, he shall, for each and every offense, forfeit and pay to the owner of such wool, wheat, oats, or other grain a sum equal to the market value thereof, and fifty per centum of the market value in addition as a penalty, the market value to be the price such article or articles bore at the time the owner thereof made demand on the warehouseman for the same. Carter Code, sec. 278; Charlton Code, sec. 278. *Id.* sec. 707.

Agreements not to be interfered with:—The provisions of the last three sections shall not interfere with any special agreement of the parties. *Id.* sec. 708.

Making false receipt or altering receipt of goods in warehouse:—That if any person shall willfully or knowingly make or alter any receipt or other written evidence of the delivery into any warehouse, commission house, forwarding house, mill, store, or other building occupied by him or his employer, of any grain, flour, pork, beef, wool, or other goods, wares, or merchandise which shall not have been so received or delivered previous to the making and uttering of such receipt or other written evidence thereof, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one year nor more than five years, or by imprisonment in the county jail not less than three months nor more than one year. Carter Code, sec. 83; Charlton Code, sec. 83. *Id.* sec. 1963.

Tax on business and trades—Vol. 30, p. 1336, Amended June 6, 1900, 31 Stat. L., 331:—That any person or persons, corporation, or company prosecuting or attempting to prosecute any of the following lines of business within the District of Alaska shall first apply for and obtain license so to do from a district court or a subdivision thereof in said District, and pay for said license for the respective lines of business and trade as follows, to wit:

* * *

Public docks, wharves, and warehouses, ten cents per ton on freight handled or stored. *Id.* sec. 2569.

Mar. 3, 1899—30 Stat. L., 1335-1341—Penalty for doing business without license—Provisos—Each day to constitute distinct offense—Opportunity to apply for license:—That any person, corporation, or company doing or attempting to do business in violation of the provisions of the foregoing section, or without having first paid the license therein required, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined, for the first offense, in a sum equal to the license required for the business, trade, or occupation; and for the second offense, a fine equal to double the amount of the license required; and for the third offense, three times the license required and imprisonment for not less than thirty days nor more than six months: *Provided*, That each day business is done or attempted to be done in violation of the preceding section shall constitute a separate and distinct offense; *And provided further*, That any person, firm or corporation hitherto engaged in any business within the said District of Alaska mentioned in the last preceding section, or that may engage in such business at any time prior to the first day of July, anno Domino eighteen hundred and ninety-nine, shall not be deemed to have violated the provisions of this section and the last preceding section if, in the opinion of the court or judge thereof, such person, firm, or corporation shall not have had reasonable time and opportunity to apply for license as hereinbefore required. Carter Code, sec. 461; Charlton Code, sec. 461.

Note: There seem to be no decisions in the Alaska reports affecting warehousemen.

HAWAII.

LAWS PERTAINING TO WAREHOUSEMEN.

Be it Enacted by the Legislature of the Territory of Hawaii:

The word "Warehousemen" as used in this Act shall mean and include every person who is or who may be engaged in the business of storing for hire, goods, wares, merchandise, effects, baggage or other portable property. Laws of Hawaii, 1909, Act No. 137, page 177, sec. 1. Approved April 28, 1909.

A warehouseman shall have a lien upon any property stored with him until all reasonable charges thereon, are paid. Such lien shall have priority over other liens of any nature and over all attachments. *Id.* sec. 2.

Whenever any goods, wares, merchandise, effects, baggage or other portable property, together with the contents thereof, stored with any warehouseman remains uncalled for and unclaimed for the period of six months from the time such property was stored, he may sell the same at public auction and out of the proceeds of such sale may retain the charges due for storage, transfer and other expenses incident thereto, if any there be, together with the costs of advertising and sale. Any balance remaining, which shall not be claimed by the owner of the property sold or his legal representatives within thirty days from the date of such sale, shall be deposited by the warehouseman with some bank or trust company, doing business under the laws of the Territory of Hawaii, to the credit of the owner and payable at any time to him or his legal representatives. *Id.* sec. 3.

No sale allowed under Section 3 of this Act shall be made until the expiration of four weeks from the first publication or notice of such sale in a newspaper of general circulation throughout the County in which such warehouseman keeps his office and place of business. Said notice shall be published once a week for three successive weeks in such newspaper and shall contain a description of such property, as near as may be,

the name of the owner, if known, the name of the warehouseman, the time said property was actually stored, the amount of charges due thereon, together with the time and place of such sale. *Id.* sec. 4.

This Act shall take effect from and after its approval. *Id.* sec. 5.

Note: There seem to be no decisions in the Hawaii reports affecting warehousemen.

PORTO RICO.

LAWS PERTAINING TO WAREHOUSEMEN.

Depositum, how constituted:—A depositum is constituted from the time a person receives a thing, belonging to another with the obligation of keeping and returning it. A compilation of the Revised Statutes and Codes of Porto Rico in force on March 9, 1911, sec. 4766.

May be consituted judicially or extrajudicially:—A depositum may be constituted judicially or extrajudicially. *Id* sec. 4767.

Depositum a gratuitous contract:—Depositum is a gratuitous contract unless there is an agreement to the contrary. *Id.* sec. 4768.

Object must be personal property:—Personal property only can be an object of a depositum. *Id.* sec. 4769.

Extrajudicial; kinds:—An extrajudicial depositum is either necessary or voluntary. *Id.* sec. 4770.

Voluntary depositum defined—May be made by whom:—A voluntary depositum is that in which delivery is made by the will of the bailor. The depositum may be made by two or more persons who believe themselves to have a right to the thing bailed in the hands of a third person, who shall, in a proper case, deliver said thing to the proper person. *Id.* sec. 4771.

Acceptance of depositum from person incapacitated:—If a person qualified to contract accepts the depositum made by another who is an incapacitated person, the former is subject to all the obligations of a bailee, and may be compelled to return it by the guardian, curator, or administrator of the person who made the depositum, or by the same person, should he become qualified. *Id.* sec. 4772.

Depositum by qualified to incapacitated person:—If the depositum has been made by a qualified person, in the hands of another who is incapacitated, the bailor shall only have the

action to recover the thing bailed as long as it remains in the possession of the bailee, or to compel the latter to pay him the sum by which he may have profited by the thing, or its price. *Id.* sec. 4773.

Obligations of bailee to keep and return things:—A bailee is obliged to keep the thing, and, when required, to return it to the bailor or to his legal representatives, or to the person who may have been designated in the contract. His liability, with regard to the keeping and loss of the thing, shall be governed by the provisions of Title first of this Book. *Id.* sec. 4774.

Permission to use thing bailed required:—The bailee cannot make use of the thing bailed without the express permission of the bailor. Otherwise he shall be liable for losses and damages. *Id.* sec. 4775.

Effect of permission to use thing bailed—Permission must be proven:—When the bailee has permission to make use of the thing bailed, the contract loses the character of a depositum and becomes a loan or a commodatum.

The permission shall not be presumed, and its existence must be proven. *Id.* sec. 4776.

Delivery of thing bailed closed and sealed—Determination of value:—When the thing bailed is delivered closed and sealed, the bailee must return it in the same condition, and shall be liable for the losses and damages if the seal or lock should have been broken by his fault.

Such bailee is presumed to be to blame unless the contrary is proven.

With regard to the value of the thing bailed, the statement of the bailor shall be admitted when the forcible opening can be charged to the bailee, should there be no proof to the contrary. *Id.* sec. 4777.

How thing bailed to be returned:—The thing bailed shall be returned with all its proceeds and accretions.

Should the depositum consist of money, the provisions relating to agents, contained in section 1626, shall be applied to the bailee. *Id.* sec. 4778.

Proof of ownership:—The bailee cannot demand that the bailor prove that he is the owner of the thing bailed.

Nevertheless, should he discover that the thing has been stolen and who is its true owner, he must inform the latter of the depositum.

If the owner, notwithstanding this, does not claim the depositum within the term of one month, the bailee shall be free from any liability by returning the thing bailed to the person from whom he received it. *Id.* sec. 4779.

Right of bailors when not joint and thing divisible—When joint or thing not divisible:—If there are two or more bailors, and they should not be joint and the thing can be divided, each one can demand his part only.

When they are joint bailors, or the thing does not admit of division, the provisions of sections 1108 and 1109 of this Code shall govern. *Id.* sec. 4780.

Loss of capacity to contract by bailor:—When the bailor loses his capacity to contract, after having made the depositum, the latter can not be returned except to the persons who have the administration of his property and rights. *Id.* sec. 4781.

Place for return of thing bailed:—When, on making the depositum, a place was designated for the return of the thing bailed, the bailee must take the thing bailed to such place; but the expense incurred by the conveyance shall be charged to the bailor.

Should no place have been designated for the return, it shall be made at the place where the thing bailed may be, even should it not be the same place where the depositum was made, provided there was no malice on the part of the bailee. *Id.* sec. 4782.

Depositum must be returned to bailor, when:—The depositum shall be returned to the bailor when he claims it, even though a specified term or time for such return may have been fixed in the contract.

This provision shall not be observed when the depositum in the possession of the bailee has been judicially attached, or should the latter have been notified of the objection of a third person to the return or to the transfer of the thing bailed. *Id.* sec. 4783.

Bailee may return depositum when:—The bailee, why may have sufficient reasons for not keeping the depositum, may, even before the term designated, return it to the bailor, and if the

latter refuses it, he may obtain its consignation from the judge. *Id.* sec. 4784.

Loss of thing through force majeure and acquisition of another:—The bailee, who may have lost the thing bailed through force majeure and received another in its place, shall be obliged to deliver the latter to the bailor. *Id.* sec. 4785.

Obligation of heir of bailor selling thing bailed:—The heir of the bailor who, in good faith, may have sold the thing which he did not know was bailed, is only obliged to return the price he may have received or to assign his actions against the purchaser in case the price should not have been paid to him. *Id.* sec. 4786.

Obligations of bailor to reimburse bailee for expenses:—A bailor is obliged to reimburse the bailee for the expenses he may have incurred in the preservation of the thing bailed, and to indemnify him for all the injuries he may have suffered by reason of the depositum. *Id.* sec. 4787.

Retention of thing by bailee until full payment:—The bailee may retain the thing bailed until the full payment of what is due him by reason of the depositum. *Id.* sec. 4788.

Bonded warehouses—Penalty:—The Treasurer of Porto Rico shall be, and is hereby, authorized in his discretion, and upon the execution of such bond as he may prescribe, to allow any person to establish a warehouse in any city, to be known as general bonded warehouse, to be used exclusively for the storage of articles taxable under this act or for the manufacture of such articles intended exclusively for export. Every such warehouse shall be under the joint custody of the proprietor thereof and of a duly appointed agent of said Treasurer and shall be kept securely locked and at no time be unlocked except in the presence of said agent. Taxable articles may, previous to the payment of the respective tax, be removed from a factory and lawfully deposited in said warehouse on complying with such regulations and after making such entries and giving such bonds as said Treasurer may prescribe. Any person removing any taxable article on which the tax has not been paid from any factory for the purpose of depositing such article in a bonded warehouse before complying with all the respective provisions of this section shall be fined not less than one hun-

dred dollars nor more than five hundred dollars, or be imprisoned for not less than one month nor more than one year. Compilation of the Revised Statutes and Codes of Porto Rico in force on March 9, 1911, sec. 3047.

Removal of articles:—Any article deposited in a general bonded warehouse may be removed therefrom upon the payment of the respective tax, payable before the removal thereof, and in the manner prescribed by the Treasurer of Porto Rico. Every person who removes or attempts to remove from a general bonded warehouse any taxable article on which the tax has not been paid in the manner herein provided shall be fined not less than one hundred dollars nor more than five hundred dollars, or shall be imprisoned for not less than one month nor more than one year: *Provided*, That any article may be removed from a general bonded warehouse for export from Porto Rico, without the payment of the tax, upon making such entries, giving such bond and complying with such other requirements as the Treasurer of Porto Rico may prescribe. *Id.* sec. 3048.

DECISIONS AFFECTING WAREHOUSEMEN

A.

Depositum (Bailment)—Rights of Depositor—Presumed Illicit Source of money:—When a person receives a sum of money and deposits the same with another, even in the alleged assumption that the source of the money was an illicit transaction with a third party, the deposition has good title to said sum of money as to all the world except the party defrauded. In such a case the maxim *In pari delicto patior est conditio defendentis* has no application because there was no fraud on depositors part in depositing the money. *Gonzales* v. *Ortiz,* 17 P. R. Reps. 563.

B.

Pleading—Setting forth contract in action in tort—Negligence may be averred in general terms:—In actions against a steamship company for failure to safely carry goods the declaration contained two counts, one charging liability as a common carrier and the other that of a warehouseman. The defendant demurred on the ground that there was an attempt to unite in the same

action both tort and contract and further on the ground that the alleged acts of negligence are not set forth. The demurrers were overruled, the court holding it was proper to set forth the contract in the declaration, the breach of which contract may properly constitute the basis of the action in tort. It was also held that in such cases negligence need only be charged in general terms and that the facts constituting the same need not, and should not be detailed. *Villar & Co.* v. *N. Y. and P. R. Steamship Co.; Hermanos* v. *Same, and Lomba & Co.* v. *Same,* 1 P. R. Fed. Reps. 265.

PHILIPPINE ISLANDS.

LAWS PERTAINING TO WAREHOUSEMEN.

The Uniform Warehouse Receipts Act is in force in the Philippine Islands. It was enacted February 5, 1912, to take effect ninety days after its publication in the Official Gazette of the Philippine Islands shall have been completed. Acts of the Second Philippine Legislature 1912, No. 2137, page 83.

Note: For provisions in respect of Customs Bonded Warehouses see Compilation of the Acts of the Philippine Commission, 1908, Chap. 151, page 602; See amendment of May 19, 1909, Public Laws Enacted by the Philippine Legislature, Vol. 7, Act No. 1912, page 176. For provisions relating to manufacturing bonded warehouses see Act, enacted October 12, 1907, Public Laws passed by the Philippine Commission, Vol. 6, Act No. 1782, page 443. For provisions of law relating to bonded warehouses for distilled spirits, etc., see Compilation of Acts of the Philippine Commission 1908, Title 32, Chap. 180, page 678.

DECISIONS AFFECTING WAREHOUSEMEN

H.

Payment of customs duties by warehouseman—Not entitled to refundment of when paid voluntarily and in violation of contract:—Plaintiff's agent received a quantity of rice belonging to him and contracted with defendants, warehousemen, to store it in a bonded warehouse. Defendants stored four-fifths in a bonded warehouse and the remainder in a warehouse not bonded, after paying the customs duties thereon. Plaintiff sold a part of the rice which was in the bonded warehouse, and paid the duties on same. Plaintiff then called upon defendants to deliver the balance of the rice. The rice in the bonded warehouse was delivered but the rice in the unbonded warehouse defendants refused to deliver until they had been reimbursed for the duties paid by them thereon. Plaintiff paid this sum to

defendants under protest and sued for its recovery. It was held that had defendants complied with the contract and stored all the rice in a bonded warehouse, no duties would have attached and the payment would have been avoided. A warehouseman is entitled to reimbursement for expenses he incurs in the performance of his contract, but not those he incurs in violation thereof. As the payment of the duties was an expense incurred in violation of the contract defendants were not entitled to reimbursement therefor. Judgment for plaintiff affirmed. *Essabhoy* v. *Smith, Bell & Co.* 5 P. I. 533.

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